

# ***ADMINISTRATIVE REGISTER OF KENTUCKY***



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 40, NUMBER 12  
SUNDAY, JUNE 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 15, 2014.

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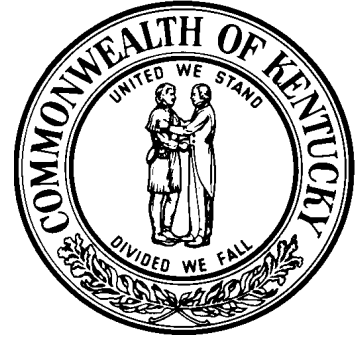
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# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 40, NUMBER 12  
SUNDAY, JUNE 1, 2014

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, May 15, 2014.

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#### MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet June 10, 2014 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 2671 – 2673 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2013 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA, JUNE 10, 2014, at 1:00 p.m., Room 149 Capitol Annex**

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Teaching Certificates**

16 KAR 2:010. Kentucky teaching certificates.

**Certification Procedures**

16 KAR 4:060. Certificate renewals and teaching experience.

**SECRETARY OF STATE**

**Address Confidentiality Program**

30 KAR 6:010 & E. Kentucky address confidentiality program. ("E" expires 9/20/2014)

**FINANCE AND ADMINISTRATION CABINET**

**Department of Revenue**

**Office of Sales and Excise Taxes**

**Selective Excise Tax; Motor Fuels**

103 KAR 43:330. Measurement of compressed natural gas (CNG) and liquefied natural gas (LNG) in gallons.

**GENERAL GOVERNMENT CABINET**

**Board of Medical Licensure**

**Board**

201 KAR 9:301. Repeal of 201 KAR 9:300.

201 KAR 9:305. Continued licensure of athletic trainers.

201 KAR 9:307. Fee schedule regarding athletic trainers.

**Board of Barbering**

**Board**

201 KAR 14:085. Sanitation requirements. (Deferred from March)

**Board of Licensure for Professional Engineers and Land Surveyors**

**Board**

201 KAR 18:192. Continuing professional development for professional land surveyors.

**Board of Nursing**

**Board**

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

201 KAR 20:161. Investigation and disposition of complaints.

201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs. (Deferred from May)

201 KAR 20:370. Applications for licensure.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

201 KAR 20:450. Alternative program.

**Board of Physical Therapy**

**Board**

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.

201 KAR 22:160. Telehealth and telephysical therapy. (Deferred from April)

**Board of Social Work**

**Board**

201 KAR 23:015. Temporary permission to practice.

**Board of Licensure for Professional Art Therapists**

**Board**

201 KAR 34:060. Qualifying experience under supervision. (Deferred from May)

**Board of Licensure for Massage Therapy**

**Board**

201 KAR 42:035. Application process, exam, and curriculum requirements. (Not Amended After Comments)

201 KAR 42:040. Renewal. (Not Amended After Comments)

201 KAR 42:060. Code of ethics and standards of practice for massage therapists. (Not Amended After Comments)

201 KAR 42:080. Programs of massage therapy instruction. (Deferred from April)

201 KAR 42:110. Continuing education requirements. (Not Amended After Comments)

**Kentucky Applied Behavior Analysis Licensing Board**

**Board**

201 KAR 43:100. Telehealth and telepractice.

**TOURISM, ARTS AND HERITAGE CABINET**

**Department of Fish and Wildlife Resources**

**Game**

301 KAR 2:300. Black bear seasons and requirements.

**JUSTICE AND PUBLIC SAFETY CABINET**

**Department of Corrections**

**Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. (Deferred from May)

501 KAR 6:999. Corrections secured policies and procedures.

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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**  
**Board of Education**  
**Department of Education**

**School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

**Office of Instruction**

704 KAR 3:370. Professional Growth and Effectiveness System.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM**

**Kentucky Fire Commission**

**Commission on Fire Protection Personnel Standards and Education**

739 KAR 2:090. Candidate Physical Ability Test. (Amended After Comments)

**PUBLIC PROTECTION CABINET**

**Department of Insurance**

**Financial Standards and Examination Division**

**Insurance Premium Finance Companies**

806 KAR 30:020. Abuse of minimum service charge.

**Health Maintenance Organizations**

806 KAR 38:100. Risk-based capital for health organizations.

**Division of Insurance Fraud Investigation**

**Insurance Fraud**

806 KAR 47:010. Designation of a contact person.

**Department of Housing, Buildings and Construction**

**Division of Building Code Enforcement**

**Kentucky Building Code**

815 KAR 7:120. Kentucky Building Code.

815 KAR 7:125. Kentucky Residential Code.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Controlled Substances**

902 KAR 55:045. Exempt prescription products.

902 KAR 55:090. Exempt anabolic steroid products.

**Department for Medicaid Services**

**Hospital Service Coverage and Reimbursement**

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement. (Amended After Comments) (Deferred from April)

**Supports for Community Living Waiver**

907 KAR 12:020E. Reimbursement for new Supports for Community Living waiver services. ("E" expires 9/4/2014) (Not Amended After Comments)

**Division of Policy and Operations**

**Veterans Affairs Nursing Facilities**

907 KAR 18:001 & E. Definitions for 907 KAR Chapter 18. ("E" expires 9/20/2014)

907 KAR 18:005 & E. Reimbursement provisions and requirements regarding Veterans Affairs nursing facility services. ("E" expires 9/20/2014)

**Department for Aging and Independent Living**

**Division of Guardianship**

**Guardianship**

910 KAR 2:040. Service provisions for adult guardianship. (Amended After Comments)

**Department for Income Support**

**Child Support Enforcement**

**Family Support**

921 KAR 1:430. Child support administrative hearings.

**REMOVED FROM JUNE AGENDA**  
**GENERAL GOVERNMENT CABINET**  
**Board of Dentistry**

**Board**

201 KAR 8:550. Anesthesia and sedation. (Comments Received, SOC ext.)

201 KAR 8:571. Registration of dental assistants. (Comments Received, SOC ext.)

**TRANSPORTATION CABINET**

**Kentucky Bicycle and Bikeways Commission**

**Motorcycle and Bicycle Safety**

601 KAR 14:020. Bicycle Safety standards. (Not Amended After Comments) (Deferred from June)

**Department of Highways**

**Division of Maintenance**

**Billboards**

603 KAR 10:001. Definitions. (Amended After Comments) (Deferred from May)

603 KAR 10:010. Static advertising devices. (Amended After Comments) (Deferred from May)

603 KAR 10:020. Electronic advertising devices. (Amended After Comments) (Deferred from May)

603 KAR 10:030. Removal of vegetation related to advertising devices. (Amended After Comments) (Deferred from May)

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**Department for Community Based Services**

**Division of Family Support**

**K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:055. Hearings and appeals. (Comments Received, SOC ext.)

**Supplemental Nutrition Assistance Program**

921 KAR 3:070. Fair hearings. (Comments Received, SOC ext.)

**Commissioner's Office**

**Child Welfare**

922 KAR 1:320. Service appeals. (Comments Received, SOC ext.)

**Division of Protection and Permanency**

**Child Welfare**

922 KAR 1:480. Appeal of child abuse and neglect investigative findings. (Comments Received, SOC ext.)

**ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW**  
**(See KRS Chapter 13A for specific provisions)**

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing and Public Comment Period**

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(As Amended at ARRS, May 13, 2014)

102 KAR 1:270. Statement of member account.

RELATES TO: KRS 161.580

STATUTORY AUTHORITY: KRS 161.310(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Kentucky Teachers' Retirement System to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. ~~[KRS 161.580 requires the Board of Trustees to maintain an individual account for each member showing the amount of the member's contributions and accumulated interest.]~~ This administrative regulation establishes standards for the content and procedures for the distribution of ~~[annual]~~ statements of members' accounts.

Section 1. Each member shall be provided with ~~a~~[an annual] statement of his or her account. Each member's ~~[annual]~~ statement shall contain the following information if applicable:

- (1) Date of birth;
- (2) Member identification;
- (3) Total service credit accrued or purchased ~~[through the end of each fiscal year or as of the employee's termination date]~~; and
- (4) Total member contribution and interest accumulation ~~[through the end of each fiscal year or as of the employee's termination date]~~;
- (5) ~~Final average salary used to determine benefits;~~
- (6) ~~Benefit payable at normal retirement age; and~~
- (7) ~~Date of eligibility for an unreduced benefit].~~

Section 2. Each member shall be ~~provided~~[mailed] on at least an annual basis ~~[to his or her last known address]~~ a statement of his or her account. This statement shall/may be provided to the member by mail delivery or by secure electronic means. Additionally, letters reflecting account status shall be mailed to inactive members with vested benefits who request a refund of their accumulated contributions and interest. In addition to the information listed in Section 1 of this administrative regulation, the letter shall inform the member that refunding the account ~~shall/will~~ result in the member forfeiting a retirement benefit to which the member would otherwise be entitled. Letters shall be mailed to each member's last known home address prior to payment of a refund of contributions.

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: December 16, 2013

FILED WITH LRC: March 13, 2014 at 8 a.m.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET  
Kentucky Teachers' Retirement System  
(As Amended at ARRS, May 13, 2014)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Kentucky

Teachers' Retirement System (KTRS) to promulgate ~~[all]~~ administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

(2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number, and last-known mailing address;

(b) The alternate payee's name and last known mailing address;

(c) Whether the order applies to;

1. An active account from which the member is not currently receiving a retirement allowance; or

2. [or to] A retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) Whether the alternate payee shall receive payments under

Option A, Option B, or Option C;

(h) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either: [i]

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) or (2) of this administrative regulation;

(i) [(h)] When payments shall begin;

(j) [(i)] When payments shall cease;

(k) [(j)] That the alternate payee shall be paid in the same form as the participant;

(l) [(k)] If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(m) [(l)] Who shall be responsible for payment of the KTRS processing fee; and

(n) [(m)] All information required on the Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by KTRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to KTRS and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments, if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for KTRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(3)(a) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a KTRS Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release.

(b) The employer shall return the completed form to KTRS within ten (10) work days.

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(5) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. KTRS shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(7) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Regulatory Compliance form, which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the

Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) KTRS Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including KTRS Military Service Certification and Affidavit form, with a copy of discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the QDRO meets KTRS requirements, KTRS shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel for signature by counsel and submission to the court. KTRS shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(10) KTRS shall reject any QDRO entered by a court which has not been reviewed or approved by KTRS prior to its submission to the court. KTRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by KTRS.

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollar nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with KTRS.

(a) The QDRO shall not become effective until the certified copy is received by KTRS.

(b) Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS, if the alternate payee has supplied a correctly executed W-4P Withholding Certificate for Pension or Annuity Payments form.

(13) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying KTRS of any change in name, or mailing address, or banking information.

(a) KTRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an

annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraphs (a) and (b) of this subsection, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee.

(e) KTRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child, or other dependent, to cease.

(a) The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate.

(b) The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

#### Section 4. A QDRO may apply to a participant's:

- (1) Retirement allowance;
- (2) Disability retirement allowance; or
- (3) Termination refund.

#### Section 5. A QDRO shall not apply to a participant's:

- (1) Survivor annuity that becomes payable after the member's death;
- (2) Survivor benefits that become payable after an active contributing member's death;
- (3) Accounts that are not vested at the time of the dissolution of marriage;
- (4) Life insurance benefit;
- (5) Refund as a result of an error;
- (6) Refund of an active or retired account in response to a member's death;
- (7) Health insurance; and
- (8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1)(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage [shall be fifty (50) percent] of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated [multiplied] by the following fraction:

1.[(a)] The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

2.[(b)] The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of retirement [dissolution of the marriage].

(b) [(c)] The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(2)(a) In the case of an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in

excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1.[(a)] The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2.[(b)] The denominator of which shall be the participant's total full and fractional years of KTRS service credit as determined by KTRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) [(c)] The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(3) [(2)] If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance which is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated which may result in a lower monthly payment to both the participant and the alternate payee.

(5) [(3)] If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) [(4)] If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) [(5)] The participant may select any retirement option, but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees. **Section 9. KTRS and its staff shall have no liability for making or withholding payments in accordance with any of the provisions of this administrative regulation.**

Section **9.[10.]** Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KTRS Authorization for Release of Information", 15 January 2013;
- (b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;
- (c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 14 March 2014[15 January 2013];
- (d) "KTRS Administrative Regulatory Compliance", 14 July

2010;

- (e) "KTRS Confidential Information", 14 January 2013;
- (f) "KTRS Authorization for Direct Deposit", 14 July 2010;
- (g) "KTRS Military Service Certification and Affidavit", 14 July 2010;

2010;

- (h) "KTRS Name or Change of Address", 14 July 2010;
- (i) "Change of Option Following Termination of Marriage", 15 February 2002;

- (j) "Change of Beneficiary", February 2002;

(k) "Designation of Beneficiary for KTRS Life Insurance Benefit", 15 January 2013;

(l) "Designation of Beneficiary for KTRS Retirement Account Balance", 15 January 2013; and

- (m) "W-4P", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at [www.irs.gov/pub/irs-pdf/w4p.pdf](http://www.irs.gov/pub/irs-pdf/w4p.pdf).

DR. TOM SHELTON, Chairperson

APPROVED BY AGENCY: December 16, 2014

FILED WITH LRC: March 13, 2014 at 8 a.m.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

**GENERAL GOVERNMENT  
Department for Local Government  
(As Amended at ARRS, May 13, 2014)**

**109 KAR 15:020. County Budget Preparation and State Local Finance Officer Policy Manual.**

RELATES TO: KRS 42.495, 43.070, 46.010, 46.020, 64.810, 64.840, 64.850, 65.117[65.7749], 65.900-65.925, 65.944, 66.045, 66.480, 67.075-67.077, 68.020, 68.210, 68.245, 68.250, 68.275, 68.280, 68.300, 68.350[686.350], 68.360, 91A.040(6), 132.010, 132.0225, 132.585, 149.590, 424.220, 424.230, 424.260, 441.135, 441.215, 441.235

STATUTORY AUTHORITY: KRS 46.010, 65.117, 66.045(2)[(3)], 68.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 46.010, 65.117, 66.045(2)[(3)], and 68.210 require the Department for Local Government to promulgate administrative regulations establishing uniform minimum requirements relating to budgeting, reporting, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds. This administrative regulation establishes the standards for budgeting, reporting, and recordkeeping for debt, receipts, and disbursements for local governments and local government officials handling public funds.

Section 1. Applicability. (1) Each county official[All-county officials] shall follow the County Budget Preparation and State Local Finance Officer Policy Manual, which contains, in part, a uniform system of accounts.

(2) County, district, and other local officers and agencies shall follow the County Budget Preparation and State Local Finance Officer Policy Manual for purposes of a uniform system of accounting and reporting on the receipt, use, and handling of public fund, other than taxes, due and payable to the state.

Section 2. Incorporation by Reference. (1) The "County Budget Preparation and State Local Finance Officer Policy Manual", January 2014[2014], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY WILDER, Commissioner

APPROVED BY AGENCY: February 10, 2014

FILED WITH LRC: February 10, 2014 at 4 p.m.

CONTACT PERSON: Darren T. Sammons, Staff Attorney, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone 502-573-2382, fax 502-573-2939.

**GENERAL GOVERNMENT CABINET  
Board of Auctioneers  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 3:090. Administrative Fees for Applications and Services.**

RELATES TO: KRS 330.050(6), 330.060, 330.070,[KRS] 330.192

STATUTORY AUTHORITY: KRS 330.050(8), 330.060(3)(a), 330.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 330.050(8) authorizes the Board of Auctioneers to promulgate administrative regulations as required to fulfill the duties and functions assigned to the board by KRS Chapter 330. KRS 330.060(3)(a) requires the board to establish an examination fee by administrative regulation. KRS 330.070 requires[authorizes] the board~~[of Auctioneers]~~ to promulgate administrative regulations concerning license fees, late fees for continuing education completion, fees associated with pocket licenses, and change of address fees. KRS 330.192 authorizes the board~~[of Auctioneers]~~ to promulgate administrative regulations concerning the auctioneer's education, research, and recovery fund. This administrative regulation establishes necessary fees associated with acquiring and maintaining auctioneer licenses.

Section 1. License Application,[and] Renewal, and Examination Fees. (1) The license fee for each new applicant with the Kentucky Board of Auctioneers shall be \$125[\$400].

(2) The license renewal fee shall be paid as of June 30th of each year.

(a) The license renewal fee shall be \$125[\$400] if paid by June 30th of each year.

(b) The license renewal fee during the six (6) month grace period after June 30th shall be \$125[\$400], in addition to a late fee of \$125[\$400]. [(c) The license renewal fee after the six (6) month-grace period, but paid prior to June 30th of the following year, shall be \$125[\$400], in addition to another]a)[late fee of \$125[\$400]].

(3) The license renewal and late fees for an apprentice auctioneer[auctioneers] shall be equal to the fees established[set forth] in subsection (2) of this section.

(4) The examination fee shall be \$125 for each new applicant with the board.

Section 2. Late Continuing Education Completion. A licensee who has failed to complete the required continuing education credits in the time period established[set forth] by KRS 330.070 shall remit a fee of \$300, and in addition, shall complete twice the amount of continuing education credits established[set forth] by statute within the following year.

Section 3. Replacement of License or Pocket License. (1) The fee for replacement of a license shall be fifteen (15) dollars.

(2) The fee for replacement of a pocket license shall be fifteen (15) dollars.

Section 4. Reactivation of License. The fee to reactivate a license which has previously been placed in escrow status shall be \$125[\$400]. In addition, the licensee shall have completed the continuing education credits established[set forth] by KRS 330.070 for the current year, and the licensee shall have paid the renewal recovery fee established in Section 6 of this administrative regulation.

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Section 5. Change of Address Fees. (1) The fee for a Residential Change of Address shall be fifteen (15) dollars.

(2) The fee for a Business Change of Address shall be fifteen (15) dollars.

Section 6. Education, Research, and Recovery Fund. The Kentucky Board of Auctioneers ~~shall~~*[may]* assess each new applicant~~[and each renewal licensee]~~ an initial recovery fee ~~of thirty (30) dollars~~ and ~~may assess~~ a renewal recovery fee, ~~[respectively,]~~ of thirty (30) dollars per year for the Education, Research, and Recovery Fund.

J. RANDALL BUSH, Chairman

APPROVED BY AGENCY: March 9, 2014

FILED WITH LRC: March 11, 2014 at 10 a.m.

CONTACT PERSON: Stephen Van Zant, General Counsel,  
2819 Ring Road, Elizabethtown, Kentucky 42701, phone (270) 765-4196, fax (270) 737-4790.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 8:016. Registration of dental laboratories.**

RELATES TO: KRS 313.021, 313.022, 313.550

STATUTORY AUTHORITY: KRS 313.021(1)(a), (c),  
313.022(1)(c), 313.080, 313.090, 313.100

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 313.021(1)(a) requires the board to govern dental laboratories.** KRS 313.021(1)(c) requires the board to promulgate administrative regulations for any license or registration created by the board. KRS 313.022(1) requires the board to promulgate administrative regulations to prescribe a reasonable schedule of fees, charges, and fines. This administrative regulation establishes requirements for the issuance and renewal of dental laboratory registration with the board. This administrative regulation establishes fees for the issuance, renewal, and reinstatement of registrations of dental laboratories with the board.

Section 1. (1) Each commercial dental laboratory operating, doing business, or intending to operate or do business in the state shall register with the board and pay the fee established in Sections 4 and 8 of this administrative regulation.

(2) A dental laboratory shall be considered operating or doing business within this state if its work product is prepared pursuant to a written authorization originating within this state.

Section 2. ~~[(1)]~~The board shall not issue a registration to a commercial dental laboratory unless the applying dental laboratory is operated under the ~~[direction and continual]~~supervision of at least one (1) certified dental technician (CDT) or dentist licensed in this state in accordance with KRS 313.550. ~~[(2) A certified dental technician shall not supervise more than one (1) dental laboratory.]~~

Section 3. ~~[The board may subject a dental laboratory to disciplinary action pursuant to KRS 313.080 and KRS 313.100]~~If the dental laboratory has violated any provision of KRS Chapter 313 or 201 KAR Chapter 8, **the dental laboratory shall be subject to disciplinary action pursuant to KRS 313.080 and 313.100.**

Section 4. Each commercial dental laboratory shall pay a fee of \$150 to the board before a registration shall be issued to the applicant.

Section 5. Upon the granting of a registration, the board shall assign to that laboratory a dental registration number. The laboratory registration number shall appear on all invoices or other correspondence of the laboratory.

Section 6. A dentist shall use only those services of a commercial dental laboratory that is duly registered with the board as required by this administrative regulation. A dentist shall include the registration number of the dental laboratory on the dentist's work order.

Section 7. Each commercial dental laboratory operating, doing business, or intending to operate or do business within the state shall submit an Application for Registration of Dental Laboratory or Renewal of Registration of Dental Laboratory to the board on a form provided by the board accompanied with the registration or renewal fee required. The application shall include:

(1) The name, mailing address, phone number, and e-mail address of the laboratory;

(2) The physical address of the laboratory if different from the mailing address;

(3) The name and CDT number of the supervising CDT or the name and license number of the supervising dentist who is licensed in this state;

(4) A statement that the laboratory meets the infectious disease control requirements under Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) of the United States Public Health Service;

(5) An acknowledgement by the supervising CDT or dentist who is licensed in this state that the laboratory will provide material disclosure to the prescribing dentist that contains the U.S. Food and Drug Administration registration number of all patient contact materials contained in the prescribed restoration in order that the dentist may include those numbers in the patient's record; **and**

(6) An acknowledgement by the supervising CDT or dentist who is licensed in this state that **he or she[they]** will disclose to the prescribing dentist the point of origin of the manufacture of the prescribed restoration. If the restoration was partially or entirely manufactured by a third-party provider, the point of origin disclosure shall identify the portion manufactured by a third-party provider and the city, state, and country of **the[such]** provider;  
**and**

~~**(7) Any other relevant information deemed necessary by the board.]**~~

Section 8. Each commercial dental laboratory registered with the board shall be required to renew its registration before July 31 each year by completing and submitting a Renewal of Registration of Dental Laboratory form and paying a fee of \$150.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Registration of Dental **Laboratories**", **March 2014[Laboratory," November 2013];** and

(b) "Renewal **Application for[of]** Registration of Dental **Laboratories**", **March 2014[Laboratory," November 2013].**

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JASON E. FORD, DMD, President

APPROVED BY AGENCY: March 8, 2014

FILED WITH LRC: March 13, 2014 at 2 p.m.

CONTACT PERSON: David J. Beyer, Executive Director,  
Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email [david.beyer@ky.gov](mailto:david.beyer@ky.gov).

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 8:532. Licensure of dentists.**

RELATES TO: KRS 39A.350-39A.366, 214.615, 218A.205, 304.040-075, 313.010(9), 313.030, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 218A.205, 313.021(1)(a), (b), (c), 313.035(1), (3), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.035 and 218A.205 require the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dentists. This administrative regulation establishes requirements and procedures for licensure of dentists.

Section 1. General Licensure Requirements. An applicant desiring dental licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) which meets or exceeds the guidelines set forth by the American Heart Association;

(8) Submit to a nation-wide criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental school or college or dental department of a university;

(11) Provide proof that the applicant has successfully completed Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dentist by examination shall complete all of the requirements listed in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dentist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of the application. ~~[(a) Prior to July 15, 2013,] The board shall accept the following regional clinical examinations:~~

~~[(a)[4-] The examination of the Council of Interstate Testing Agencies (CITA);~~

~~[(b)[2-] The examination of the Central Regional Dental Testing Service (CRDTS);~~

~~[(c)[3-] The examination of a North East Regional Board of Dental Examiners (NERB);~~

~~[(d)[4-] The examination of the Southern Regional Testing Agency (SRTA); and~~

~~[(e)[5-] The examination of the Western Regional Examining Board (WREB). [(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.]~~

(3) An individual desiring initial licensure as a dentist by examination more than two (2) years after fulfilling all of the

requirements of his CODA accredited dental education shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan approved by the board.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dentist by credentials shall:

(1) Complete all of the requirements listed in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dentistry when he or she was legally authorized to practice dentistry in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Student Limited Licensure. (1) Each individual desiring a student limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of a postgraduate, residency, or fellowship program in the Commonwealth of Kentucky stating that the applicant has been accepted into the program and the expected date of completion;

(c) Submit a signed Statement Regarding Student Licensure Limitations; and

(d) Submit an official final transcript of the applicant's dental coursework with the degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a student and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a student.

(4) A program enrolling an individual holding a student limited license shall notify the board in writing of the date the student graduates from or exits the program.

(5) Nothing in this section shall prohibit:

(a) A student from performing a dental operation under the supervision of a competent instructor within the dental school, college, or department of a university or private practice facility approved by the board. The board may authorize a student of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. A fee shall not be accepted by the student beyond the expenses provided by the stipend;

(b) A student limited license holder from working under the general supervision of a licensed dentist within the confines of the postgraduate training program; and

(c) A volunteer health practitioner from providing services under KRS 39A.350-39A.366.

Section 5. Requirements for Faculty Limited Licensure. (1) Each individual desiring a faculty limited license shall:

(a) Complete all of the requirements listed in Section 1 of this administrative regulation with the exception of subsections (10) and (11);

(b) Provide a letter from the dean or program director of the dental school showing a faculty appointment with one (1) of the Commonwealth's dental schools;

(c) Submit a signed Statement Regarding Faculty Licensure Limitations; and

(d) Submit an official final transcript of his or her dental coursework with the degree posted.

(2) An individual licensed under this section shall only practice dentistry in conjunction with programs of the dental school where the individual is a faculty member and shall only provide professional services to patients of these programs.

(3) Licenses issued under this section shall be renewed with all other dental licenses issued by the board and shall automatically expire upon the termination of the holder's status as a faculty member.

(4) A program employing an individual holding a faculty limited license shall notify the board in writing of the date the licensee exits the program.

Section 6. Requirements for Licensure of Foreign Trained Dentists. (1) Each individual desiring licensure as a dentist who is a graduate of a non-CODA accredited dental program shall successfully complete two (2) years of postgraduate training in a CODA accredited general dentistry program and shall:

(a) Provide proof of having passed the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service with a score of 650 on the paper-based examination or a score of 116 on the internet-based examination, if English is not the applicant's native language;

(b) Submit a completed, signed, and notarized Application for Dental Licensure with an email contact address and with an attached applicant photo taken within the past six (6) months;

(c) Pay the fee required by 201 KAR 8:520;

(d) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(e) Provide proof of having completed the requirements of KRS 214.615(1);

(f) Complete and pass the board's jurisprudence exam;

(g) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines set forth by the American Heart Association;

(h) Submit to a criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police;

(i) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(j) Provide proof of having successfully completed two (2) years postgraduate training in a CODA accredited general dentistry program;

(k) Submit one (1) letter of recommendation from the program director of each training site;

(l) Provide proof of successful completion of Part I and Part II of the National Board Dental Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations within the five (5) years preceding application for licensure;

(m) Provide proof of successfully completing within the five (5) years prior to application a clinical examination required by Section 2(2) of this administrative regulation; and

(n) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual desiring initial licensure as a dentist who is a graduate of a non-CODA accredited dental program and applies more than two (2) years after fulfilling all of the requirements of his or her postgraduate training in a CODA accredited general dentistry program shall:

(a) Hold a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dentistry in good standing, complete a board approved refresher course

prior to receiving a license to practice dentistry in the Commonwealth of Kentucky.

Section 7. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Licensure with an attached applicant photo taken within the past six (6) months;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dentistry in good standing in another state or territory of the United States or the District of Columbia; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed under this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met the requirements of KRS 313.254 and 201 KAR 8:581;

(b) Only perform procedures allowed by KRS 313.254(4) and (5) which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured under KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer;

(e) Have a charitable limited license that shall be valid for no more than two (2) years and shall expire during the regular dental renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participating in a charitable clinic shall have a license to practice dentistry in the state in which the dentist practices.

(3) A dentist licensed under this section shall not be allowed to prescribe any medications while practicing in the Commonwealth.

Section 8. Requirements for Specialty Licensure. Each individual desiring initial licensure as a specialist as defined by KRS 313.010(9) shall:

(1) Submit a completed, signed, and notarized Application for Specialty Licensure with an attached applicant photo taken within the past six (6) months;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold an active Kentucky license to practice general dentistry prior to being issued a specialty license; and

(4) Submit satisfactory evidence of completing a CODA accredited graduate or postgraduate specialty program after graduation from a dental school.

Section 9. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dentistry and would be useful to the licensee's practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Competence to diagnose oral pathology;

(d) Awareness of currently accepted methods of infection control;

(e) Knowledge of basic medical and scientific subjects including biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(f) Knowledge of clinical and technological subjects;

(g) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(h) Competency in assisting in mass casualty or mass immunization situations;

(i) Clinical skills through the volunteer of clinical charitable dentistry that meets the requirements of KRS 313.254;

(j) Knowledge of office business operations and best practices; or

(k) Participation in dental association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(i) - (k) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of or verification by the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual licensee to obtain documentation from the provider or sponsoring organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 10. Requirements for Renewal of a Dental License. (1) Each individual desiring renewal of an active dental license shall:

(a) Submit a signed, completed, ~~signed, and notarized~~ Application for Renewal of Dental Licensure with an email contact address ~~and with an attached applicant photo taken within the past six (6) months~~;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse CPR certification that meets or exceeds the guidelines set forth by the American Heart Association unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1) regarding HIV/AIDS education for healthcare providers;

(e) Obtain at least one and one-half (1.5) hours of continuing education in the use of the Kentucky All Schedule Prescription Electronic Reporting System, pain management, or addiction disorders per year or a total of three (3) hours in a two (2) year renewal cycle; and

(f) Meet the continuing education requirements as outlined in Section 9 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements outlined in Section 9 of this administrative regulation.

(2) If a licensee has not actively practiced dentistry in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board approved refresher course prior to resuming the active practice of dentistry.

Section 11. Retirement of a License. (1) Each individual desiring retirement of a dental license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of this form, the board shall send written confirmation of retirement to the address provided by the licensee on the Retirement of License form.

(3) A licensee shall not retire a license that has a pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 12. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental license shall:

(a) Submit a completed, signed, and notarized Application to Reinstatement a Dental License with an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines set forth by the American Heart Association;

(d) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dentistry held previously or currently in any state or jurisdiction;

(e) Submit to a nation-wide criminal background check by fingerprint through the Federal Bureau of Investigation or by the Department of Kentucky State Police; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as outlined in Section 9 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dentistry in the two (2) consecutive years immediately preceding the filing of the reinstatement application, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as outlined in Section 9 of this administrative regulation prior to the renewal of the license.

Section 13. Requirements for Verification of Licensure. Each individual desiring verification of a dental license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 14. Requesting a Duplicate License. Each individual desiring a duplicate dental license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 15. Issuance of Initial Licensure. If an applicant has completed all of the requirements for licensure within six (6) months of the date the application was received at the office of the board, the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Licensure", July 2010;

(b) "Statement Regarding Student Licensure Limitations", July



2010;

(c) "Statement Regarding Faculty Licensure Limitations", July 2010;

(d) "Application for Charitable Dental Licensure," March 2011;

(e) "Application for Specialty Licensure", July 2010;

(f) "Application for Renewal of Dental Licensure", May 2014~~January 2011~~;

(g) "Retirement of License Form", July 2010;

(h) "Application to Reinstate a Dental License", July 2010;

(i) "Verification of Licensure or Registration Form", July 2010;

(j) "Duplicate License or Registration Request Form", July 2010; and

(k) "American Heart Association CPR Guidelines", 2010.

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**GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 8:562. Licensure of dental hygienists.**

RELATES TO: KRS 214.615, 304.40 - 075, 313.030, 313.040, 313.060, 313.080, 313.130, 313.254

STATUTORY AUTHORITY: KRS 214.615(2), 313.021(1)(a) - (c), 313.040(1), (2), (7), 313.254

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.040 requires the board to promulgate administrative regulations relating to requirements and procedures for the licensure of dental hygienists. This administrative regulation establishes requirements and procedures for the licensure of dental hygienists.

Section 1. General Licensure Requirements. An applicant desiring licensure in the Commonwealth shall at a minimum:

(1) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(2) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(3) Pay the fee required by 201 KAR 8:520;

(4) Not be currently subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(5) Provide proof of completion of the requirements of KRS 214.615(1);

(6) Complete and pass the board's jurisprudence exam;

(7) Provide proof of having current certification in cardiopulmonary resuscitation (CPR) that meets or exceeds the guidelines established by the American Heart Association, incorporated by reference in 201 KAR 8:532;

(8) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint;

(9) Provide verification within three (3) months of the date the application is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(10) Provide proof that the applicant is a graduate of a Commission on Dental Accreditation (CODA) accredited dental

hygiene school or college or dental hygiene department of a university;

(11) Provide proof that the applicant has successfully completed the National Board Dental Hygiene Examination, which is written and theoretical, conducted by the Joint Commission on National Dental Examinations; and

(12) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

Section 2. Requirements for Licensure by Examination. (1) Each individual desiring initial licensure as a dental hygienist by examination shall complete all of the requirements established in Section 1 of this administrative regulation.

(2) Each individual desiring initial licensure as a dental hygienist by examination shall successfully complete a clinical examination within the five (5) years preceding the filing of his or her Application for Dental Hygiene Licensure.~~[(a) Prior to July 15, 2013,] The board shall accept the following regional clinical examinations:~~

~~[(a)[4-] The examination of the Council of Interstate Testing Agencies (CITA);~~

~~[(b)[2-] The examination of the Central Regional Dental Testing Service (CRDTS);~~

~~[(c)[3-] The examination of the North East Regional Board of Dental Examiners (NERB);~~

~~[(d)[4-] The examination of the Southern Regional Testing Agency (SRTA); or~~

~~[(e)[5-] The examination of the Western Regional Examining Board (WREB). [(b) After July 15, 2013, the board shall only accept a nationalized clinical examination.]~~

(3) An individual desiring initial licensure as a dental hygienist by examination more than two (2) years after fulfilling all of the requirements of his CODA accredited dental hygiene education shall:

(a) Hold a license to practice dental hygiene in good standing in another state or territory of the United States or the District of Columbia; or

(b) If the applicant does not hold a license to practice dental hygiene in good standing, complete a board-approved refresher course prior to receiving a license to practice dental hygiene in the Commonwealth of Kentucky.

(4) An applicant who has taken a clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until the applicant has completed and passed a remediation plan prescribed by the board based on the applicant's deficiencies.

Section 3. Requirements for Licensure by Credentials. Each individual desiring initial licensure as a dental hygienist by credentials shall:

(1) Complete all of the requirements established in Section 1 of this administrative regulation;

(2) Provide proof of having passed a state, regional, or national clinical examination used to determine clinical competency in a state or territory of the United States or the District of Columbia; and

(3) Provide proof that, for five (5) of the six (6) years immediately preceding the filing of the application, the applicant has been engaged in the active practice of dental hygiene while he or she was legally authorized to practice dental hygiene in a state or territory of the United States or the District of Columbia if the qualifications for the authorization were equal to or higher than those of the Commonwealth of Kentucky.

Section 4. Requirements for Charitable Limited Licensure. (1) Each individual desiring a charitable limited license shall:

(a) Understand, read, speak, and write the English language with a comprehension and performance level equal to at least the ninth grade of education, otherwise known as Level 4, verified by testing as necessary;

(b) Submit a completed, signed, and notarized Application for Charitable Dental Hygiene Licensure with an attached applicant photo taken within the past six (6) month;

(c) Not be subject to disciplinary action pursuant to KRS Chapter 313 that would prevent licensure;

(d) Have a license to practice dental hygiene in good standing in another state; and

(e) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) An individual licensed pursuant to this section shall:

(a) Work only with charitable entities registered with the Cabinet for Health and Family Services that have met requirements of KRS 313.254 and 201 KAR 8:580;

(b) Only perform procedures allowed by KRS 313.254, which shall be completed within the duration of the charitable event;

(c) Be eligible for the provisions of medical malpractice insurance procured pursuant to KRS 304.40-075;

(d) Perform these duties without expectation of compensation or charge to the individual and without payment or reimbursement by any governmental agency or insurer;

(e) Have a charitable limited license that shall be good for two (2) years and expire during the regular dental hygiene renewal cycle; and

(f) Comply with reciprocity requirements if applicable.

1. A state that extends a reciprocal agreement shall comply with this section.

2. An individual shall notify the sponsor of a charitable clinic and the board of the intent to conduct or participate in the clinic.

3. An individual conducting or participate in a charitable clinic shall have a license to practice dental hygiene in the state in which the dental hygienist practices.

Section 5. Minimum Continuing Education Requirements. (1) Each individual desiring renewal of an active dental hygiene license shall complete thirty (30) hours of continuing education that relates to or advances the practice of dental hygiene and would be useful to the licensee in his practice.

(2) Acceptable continuing education hours shall include course content designed to increase:

(a) Competency in treating patients who are medically compromised or who experience medical emergencies during the course of dental hygiene treatment;

(b) Knowledge of pharmaceutical products and the protocol of the proper use of medications;

(c) Awareness of currently accepted methods of infection control;

(d) Knowledge of basic medical and scientific subjects including, biology, physiology, pathology, biochemistry, pharmacology, epidemiology, and public health;

(e) Knowledge of clinical and technological subjects;

(f) Knowledge of subjects pertinent to patient management, safety, and oral healthcare;

(g) Competency in assisting in mass casualty or mass immunization situations;

(h) Clinical skills through the volunteer of clinical charitable dental hygiene that meets the requirements of KRS 313.254;

(i) Knowledge of office business operations and best practices; or

(j) Participation in dental or dental hygiene association or society business meetings.

(3) A minimum of ten (10) hours shall be taken in a live interactive presentation format.

(4) A maximum of ten (10) hours total may be taken that meet the requirements of subsection (2)(h) - (j) of this section.

(5) All continuing education hours shall be verified by the receipt of a certificate of completion or certificate of attendance bearing:

(a) The signature of the provider;

(b) The name of the licensee in attendance;

(c) The title of the course or meeting attended or completed;

(d) The date of attendance or completion;

(e) The number of hours earned; and

(f) Evidence of the method of delivery if the course was taken in a live interactive presentation format.

(6) It shall be the sole responsibility of the individual dental hygienist to obtain documentation from the provider or sponsoring

organization verifying participation as established in subsection (5) of this section and to retain the documentation for a minimum of five (5) years.

(7) At license renewal, each licensee shall attest to the fact that he or she has complied with the requirements of this section.

(8) Each licensee shall be subject to audit of proof of continuing education compliance by the board.

Section 6. Requirements for Renewal of a Dental Hygiene License. (1) Each individual desiring renewal of an active dental hygiene license shall:

(a) Submit a completed, signed, ~~and notarized~~ Application for Renewal of Dental Hygiene Licensure with an email contact address ~~and an attached applicant photo taken within the past six (6) months~~;

(b) Pay the fee required by 201 KAR 8:520;

(c) Maintain with no more than a thirty (30) day lapse, CPR certification that meets or exceeds the guidelines established by the American Heart Association, incorporated by reference in 201 KAR 8:530, unless a hardship waiver is submitted to and subsequently approved by the board;

(d) Meet the requirements of KRS 214.615(1); and

(e) Meet the continuing education requirements as established in Section 5 of this administrative regulation except in the following cases:

1. If a hardship waiver has been submitted to and is subsequently approved by the board;

2. If the licensee graduated in the first year of the renewal biennium, in which case the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation; and

3. If the licensee graduated in the second year of the renewal biennium, in which case the licensee shall not be required to complete the continuing education requirements established in Section 5 of this administrative regulation.

(2) If a licensee has not actively practiced dental hygiene in the two (2) consecutive years preceding the filing of the renewal application, he or she shall complete and pass a board-approved refresher course prior to resuming the active practice of dental hygiene.

Section 7. Retirement of a License. (1) Each individual desiring retirement of a dental hygiene license shall submit a completed and signed Retirement of License Form.

(2) Upon receipt of Retirement of License Form, the board shall send written confirmation of retirement to the last known address of the licensee.

(3) A licensee shall not retire a license that has pending disciplinary action against it.

(4) Each retirement shall be effective upon the processing of the completed and signed Retirement of License Form by the board.

Section 8. Reinstatement of a License. (1) Each individual desiring reinstatement of a properly retired dental hygiene license shall:

(a) Submit a completed, signed, and notarized Application for Dental Hygiene Licensure with an email contact address and an attached applicant photo taken within the past six (6) months;

(b) Pay the fee required by 201 KAR 8:520;

(c) Show proof of having current certification in CPR that meets or exceeds the guidelines established by the American Heart Association, incorporated by reference in 201 KAR 8:532;

(d) Provide verification within three (3) months of the date the Application for Dental Hygiene Licensure is received at the office of the board of any license to practice dental hygiene held previously or currently in any state or jurisdiction;

(e) Submit to a criminal background check from the Administrative Office of the Courts in Kentucky, from the state or states of residence for the last five (5) years, or by fingerprint; and

(f) Provide a written explanation for any positive returns on a query of the National Practitioner Data Bank.

(2) If an individual is reinstating a license that was retired within

the two (2) consecutive years immediately preceding the filing of the reinstatement application, the individual shall provide proof of having met the continuing education requirements as established in Section 5 of this administrative regulation within those two (2) years.

(3) If the applicant has not actively practiced dental hygiene in the two (2) consecutive years immediately preceding the filing of the Application to Reinstate a Dental Hygiene License, the applicant shall complete and pass a refresher course approved by the board.

(4) If a license is reinstated in the first year of a renewal biennium, the licensee shall complete all of the continuing education requirements as established in Section 5 of this administrative regulation prior to the renewal of his license.

(5) If a license is reinstated in the second year of a renewal biennium, the licensee shall complete one-half (1/2) of the hours as established in Section 5 of this administrative regulation prior to the renewal of his license.

Section 9. Requirements for Verification of Licensure. Each individual desiring verification of a dental hygiene license shall:

(1) Submit a signed and completed Verification of Licensure or Registration Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 10. Requesting a Duplicate License. Each individual desiring a duplicate dental hygiene license shall:

(1) Submit a signed and completed Duplicate License or Registration Request Form; and

(2) Pay the fee required by 201 KAR 8:520.

Section 11. Requirements for Local Anesthesia Registration.

(1) An individual who has completed a course of study in dental hygiene at a board-approved CODA accredited institution on or after July 15, 2010, which meets or exceeds the education requirements as established in KRS 313.060(10) shall be granted the authority to practice local anesthesia upon the issuance by the board of a dental hygiene license.

(2) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to administer local anesthesia and does not qualify to do so pursuant to Section 12(1) of this administrative regulation shall complete a training and education course as described in KRS 313.060(10).

(3) The training and education course shall be offered by at least one (1) of the following institutions in Kentucky:

- (a) University of Louisville School of Dentistry;
- (b) University of Kentucky College of Dentistry;
- (c) Western Kentucky University Dental Hygiene Program; and
- (d) Kentucky Community Technical College System Dental Hygiene Programs.

(4) Training received outside of Kentucky shall be from a CODA accredited dental or dental hygiene school and shall meet the requirements established in KRS 313.060(10).

(5) Once the required training is complete the applicant shall:

(a) Complete the Dental Hygiene Local Anesthesia Registration Application; and

(b) Pay the fee required by 201 KAR 8:520.

(6) Individuals authorized to practice pursuant to this provision shall receive a license from the board indicating registration to administer local anesthesia.

(7) A licensed dental hygienist shall not administer local anesthesia if the licensee does not hold a local anesthesia registration issued by the board.

(8) A licensed dental hygienist holding a local anesthesia registration from the board who has not administered block anesthesia, infiltration anesthesia, or nitrous oxide analgesia for one (1) year shall complete a board-approved refresher course prior to resuming practice of that specific technique.

Section 12. Requirements for General Supervision Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice under general supervision shall:

(a) Complete the General Supervision Registration Application;

(b) Meet the requirements of KRS 313.040(7)(a);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience;

(d) Successfully complete a live three (3) hour course approved by the board in the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice pursuant to these provisions shall receive a license from the board indicating registration to practice under general supervision.

(3) A dentist who employs a dental hygienist who has met the standards of this administrative regulation and who allows the dental hygienist to provide dental hygiene services pursuant to KRS 313.040(7) shall complete a written order prescribing the dental service or procedure to be done to a specific patient by the dental hygienist and shall retain the original order in the patient's dental record.

(4) The minimum requirements for the written order shall include:

(a) Medical history update;

(b) Radiographic records requested;

(c) Dental hygiene procedures requested;

(d) Name of the patient;

(e) Date of last oral examination;

(f) Date of the written order; and

(g) Signature of the dentist.

(5) The oral examination of the patient by the supervising dentist shall have been completed within the seven (7) months preceding treatment by the dental hygienist practicing under general supervision.

(6) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills necessary to perform dental hygiene services established in KRS 313.040(7) as part of the General Supervision Registration Application.

(7) The supervising dentist shall provide a written protocol addressing the medically compromised patients who may or may not be treated by the dental hygienist. The dental hygienist shall only treat patients who are in the ASA Patient Physical Status Classification of ASA I or ASA II as established in Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, 2007 Edition, American Dental Association.

(8) A licensed dental hygienist shall not practice under general supervision if the licensee does not hold a general supervision registration issued by the board.

Section 13. Requirements for Starting Intravenous Access Lines. (1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action pursuant to KRS Chapter 313 who desires to start an intravenous (IV) access line while under the direct supervision of a dentist who holds a sedation or anesthesia permit issued by the board shall:

(a) Submit a signed and completed Application for Intravenous Access Line Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in starting IV access lines.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to start IV access lines.

(3) A licensed dental hygienist shall not start an IV access line if the licensee does not hold a board-issued registration to start IV

access lines.

Section 14. Requirements for Performing Laser Debridement.

(1) An individual licensed as a dental hygienist in Kentucky and not subject to disciplinary action pursuant to KRS Chapter 313 who desires to perform laser debridement while under the direct supervision of a dentist licensed by the board shall:

(a) Submit a signed and completed Application for Laser Debridement Registration;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Submit documentation proving successful completion of a board-approved course in performing laser debridement.

(2) An individual authorized to practice pursuant to this provision shall receive a license from the board indicating registration to perform laser debridement.

(3) A licensed dental hygienist shall not perform laser debridement if the licensee does not hold a registration to do so issued by the board.

Section 15. Requirements for Public Health Registered Dental Hygienist Registration. (1) An individual licensed as a hygienist in Kentucky and not subject to disciplinary action who desires to practice as a public health registered dental hygienist shall:

(a) Submit a completed Public Health Registered Dental Hygienist Application;

(b) Meet the requirements established in KRS 313.040(8);

(c) Document through payroll records, employment records, or other proof that is independently verifiable, the dates and hours of employment by a dentist in the practice of dental hygiene that demonstrate the required two (2) years and 3,000 hours of experience; and

(d) During each renewal cycle, successfully complete a live three (3) hour course that has been approved by the board on the identification and prevention of potential medical emergencies that shall include, at a minimum, the following topics:

1. Medical history, including American Society of Anesthesiologists (ASA) classifications of physical status;

2. Recognition of common medical emergency situations, symptoms, and possible outcomes;

3. Office emergency protocols; and

4. Prevention of emergency situations during dental treatments.

(2) An individual authorized to practice pursuant to subsection (1) of this section shall receive a certificate from the board indicating registration to practice as a public health registered dental hygienist.

(3) A public health registered dental hygienist desiring to maintain certification as a public health registered dental hygienist shall be required to complete at least five (5) hours of continuing education in the area of public health or public dental health during each renewal cycle.

(4) Pursuant to KRS 313.040(8)(c), a public health registered dental hygienist may practice in a government-created public health program at the following sites:

(a) Local health departments;

(b) Public or private educational institutions that provide Head Start, preschool, elementary and secondary instruction to school-aged children under the jurisdiction of the State Board of Education, and that have an affiliation agreement with the health department of jurisdiction;

(c) Mobile and portable dental health programs under contract with a governing board of health; and

(d) Public or private institutions under the jurisdiction of a federal, state, or local agency.

(5) A public health registered dental hygienist shall perform dental hygiene services only under the supervision of the governing board of health, as required by KRS 313.040(3)(b), as established in KRS 313.040(8), and as identified by the Department for Public Health Practice Reference.

(a) These services shall be limited to preventative services.

(b) The public health registered dental hygienist shall only treat a patient who is in the ASA Patient Physical Status Classification of ASA I or ASA II as established in the current edition of Guidelines

for Teaching Pain Control and Sedation to Dentists and Dental Students, American Dental Association.

(c) The informed consent shall be required prior to preventative services and shall include:

1. The name of the public health entity, including the name of the dentist, that assumes responsibility and control;

2. An inquiry as to the current dentist; and

3. A statement that services are provided by a dental hygienist without the direct supervision of a dentist.

(d) This administrative regulation shall not preclude a Kentucky-licensed dentist from directly participating in a public health program referenced in subsection (4)(a)[4(a)], (b), (c), or (d) of this section[subsection].

Section 16. Issuance of Initial Licensure. If an applicant has completed the requirements for licensure the board shall:

(1) Issue a license in sequential numerical order; or

(2) Deny licensure due to a violation of KRS Chapter 313 or 201 KAR Chapter 8.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Dental Hygiene Licensure", January 2011;

(b) "Application for Charitable Dental Hygiene Licensure", July 2010;

(c) "Application for Renewal of Dental Hygiene Licensure", May 2014[January 2011];

(d) "Retirement of License Form", July 2010;

(e) "Application to Reinstate a Dental Hygiene License", July 2010;

(f) "Verification of Licensure or Registration Form", July 2010;

(g) "Duplicate License or Registration Request Form", July 2010;

(h) "Dental Hygiene Local Anesthesia Registration Application", July 2010;

(i) "General Supervision Registration Application", July 2010;

(j) "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", 2007 Edition;

(k) "Application for Intravenous Access Line Registration", July 2010;

(l) "Application for Laser Debridement Registration", July 2010; and

(m) "Application for Public Health Registered Dental Hygienist", May 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

This material is also available on the board's Web site at <http://dentistry.ky.gov>.

DR. JASON E. FORD, DMD, Board President

APPROVED BY AGENCY: March 8, 2014

FILED WITH LRC: March 13, 2014 at 2 p.m.

CONTACT PERSON: David J. Beyer, Executive Director, Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email david.beyer@ky.gov.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Barbering  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 14:090. School curriculum.**

RELATES TO: KRS 317.410, 317.440(1)(e), 317.540

STATUTORY AUTHORITY: KRS 317.440(1)(e), 317.540(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(e) requires the Board of Barbering to promulgate an administrative regulation governing the hours and courses of instruction at barber schools. KRS 317.540 requires the board to

promulgate an administrative regulation prescribing the courses and requirements for a barber school. This administrative regulation establishes requirements for the course of study at barber schools.

Section 1. A student shall receive at least 1,500 hours in practice work and lectures based on the following courses of study:

- (1) Instruments - thirty (30) hours;[-]
  - (a) Razors;[-]
  - (b) Shears;[-]
  - (c) Clippers;[-]
  - (d) Hones and strops; and[-]
  - (e) Combs, brushes, hair dryers, and curling irons;[-]
- (2) Shaving instructions – 100 hours;[-]
  - (a) Purpose of lather;[-]
  - (b) Application of~~[How to apply]~~ lather properly to the face;[-]
  - (c) Sterilization of~~[How to sterilize]~~ razor before shaving;[-]
  - (d) Stretching~~[How to stretch]~~ the skin while shaving;[-]
  - (e) Proper method for wiping the razor;[-]
  - (f) Shaving~~[How to shave]~~ a patron once over;[-]
  - (g) Shaving~~[How to shave]~~ a patron second time over;[-]
  - (h) Method of removing soap and cleaning face with hot towels after shaving;[-]
  - (i) Application of~~[How to apply]~~ various after shave creams and lotions;[-]
  - (j) Trimming~~[How to trim]~~ a mustache; and[-]
  - (k) Demonstrations and lectures on the various positions for holding a razor to shave a face while standing on one (1) side of the barber chair.
    1. Each stroke shall be thoroughly explained.
    2. The instructor shall ensure that the student:
      - a. Uses professional technique while performing the shaving strokes;
      - b. Understands the necessity of:
        - (i) Personal hygiene;
        - (ii) Using clean linens; and
        - (iii) Sterilizing each instrument used on a patron; and
      - c. Is advised to pay attention to a patron's comfort while in the chair.
    3. The different textures of beards and the directions of the grain shall be explained;[-]
  - (3) Haircutting for men, women, and children – 935 hours;[-]
    - (a) Application of~~[How to apply]~~ hair cloth, towel, and neck strip;[-]
    - (b) Combing~~[How and why to comb]~~ hair before cutting;[-]
    - (c) Method of tapering hair;[-]
    - (d) Method of thinning hair;[-]
    - (e) Method of finger work;[-]
    - (f) Method of cutting hair on top of head;[-]
    - (g) Method of cutting hair with a razor;[-]
    - (h) Using~~[How to use]~~ a neck duster or tissue;[-]
    - (i) Method of shaving sides and neck after removing hair cloth;[-]
    - (j) Method of combing, drying, and dressing the hair; and[-]
    - (k) The methods of haircutting and hair styling;[-]
    - (4) Shampooing – forty (40) hours;[-]
      - (a) Purpose of and giving~~[and how to give]~~ a proper shampoo;[-]
      - (b) Preparing~~[How to prepare]~~ customer for shampoo;[-]
      - (c) Different materials to be used; and[-]
      - (d) Difference in various kinds of shampoo;[-]
      - (5) Permanent waving – forty (40) hours;[-]
        - (a) Explanation of~~[Explain]~~ chemical and physical actions in permanent waving;[-]
        - (b) Necessity of scalp and hair analysis;[-]
        - (c) Basic requirements, blocking sections, curling rods, and processing time; and[-]
        - (d) Safety and protection for patrons;[-]
        - (6) Hair coloring – forty (40) hours;[-]
          - (a) Safety measures;[-]
          - (b) Chemicals involved; and[-]
          - (c) Application~~[How to apply]~~;[-]
          - (7) Hair straightening and relaxing – forty (40) hours;[-]

- (a) Patron protection;[-]
- (b) Hair and scalp analysis; and[-]
- (c) Methods of application;[-]
- (8) Massaging – thirty-five (35) hours;[-]
  - (a) Theory and different types of massaging;[-]
  - (b) Application and[-] demonstration of various creams and lotions in facial;[-]
  - (c) Effect of light therapy on tissues;[-]
  - (d) Results produced by massage on the skin, muscles, cells, glands, and circulation;[-]
  - (e) Proper recommendation of~~[When, and when not, to recommend]~~ massage; and[-]
  - (f) All modern, electrical equipment used in barber shops with demonstrations;[-]
  - (9) Scalp and skin diseases – twenty (20) hours;[-]
    - (a) Various kinds of scalp treatment;[-]
    - (b) Properly advising a patron to~~[When to suggest that patron]~~ consult a physician;[-]
    - (c) The danger of giving a scalp treatment to a scalp afflicted with an unknown disease;[-]
    - (d) Explanation of~~[Explain]~~ causes and treatment of dandruff;[-]
    - (e) Giving~~[Give]~~ causes of dry and oily scalps and treatment;[-]
    - (f) Explanation of~~[Explain]~~ various forms of alopecia and treatment;[-]
    - (g) Explanation of~~[Explain]~~ causes of seborrhea, acne, psoriasis, impetigo, and eczema in their various forms; and[-]
    - (h) Explanation of~~[Explain]~~ advisability of cooperating with physician in treating scalp in barber shop;[-]
    - (10) Physiology and anatomy of the head, face, and neck – 100 hours;[-]
      - (a) Giving~~[Give]~~ descriptions of skin, hair, glands, and their various functions;[-]
      - (b) Shedding and regrowth of hair;[-]
      - (c) Sweat glands and their functions;[-]
      - (d) Hair follicle, hair bulb, and papilla;[-]
      - (e) Sympathetic and cerebrospinal nervous system;[-]
      - (f) Blood supply to the face and scalp;[-]
      - (g) Preservation and beautification of the hair and skin;[-]
      - (h) Microscopic studies of the hair; and[-]
      - (i) Benefits derived from relaxation from fatigue while in barber chair;[-]
      - (11) Sterilization and sanitation – forty (40) hours;[-]
        - (a) Definition of sterilization, disinfectants, antiseptics, and their uses;[-]
        - (b) Chemicals to be used in sterilization;[-]
        - (c) Methods of sterilization;[-]
        - (d) Difference between contagion and infection;[-]
        - (e) Taking precautions to prevent infection; and[-]
        - (f) Importance of sterilization of all instruments used in the barber shop;[-]
        - (12) Hygiene – ten (10) hours;[-]
          - (a) Theory and importance of personal hygiene; and[-]
          - (b) Hygiene as it applies to the practice of barbering;[-]
          - (13) Bacteriology – twenty (20) hours;[-]
            - (a) Discovery of existence of bacteria;[-]
            - (b) Production, growth, and destruction of bacteria;[-]
            - (c) Necessity of elementary knowledge of bacteria;[-]
            - (d) Possibility of barber shop infection;[-]
            - (e) Various agents that may carry bacteria in barber shop service;[-]
            - (f) Difference in bacteria that are helpful and needed and bacteria that are harmful; and[-]
            - (g) Advice concerning~~[Advise]~~ absolute cleanliness and sanitation in all practices of barbering because of harmful bacteria;[-]
            - (14) Electricity – ten (10) hours;[-] Explanation of~~[Explain]~~ various electrical equipment and appliances that can be used in barber science treatments;[-]
            - (15) Pharmacology – twenty (20) hours;[-] Explanation of~~[Explain]~~ the value of medicinal and nonmedicinal ingredients found in barber shop preparations, hair dyes, face lotions,

shampoos, permanent, tints, bleaches, and specially prepared face and scalp remedies designated for local action;[-]

(16) Psychology – ten (10) hours;[-]

(a) Necessity of organization;[-]

(b) High ideals in the barber business; ~~and~~[-]

(c) ~~Emphasis on~~**[Emphasize]** development of personality and skill to inspire confidence in the public; ~~and~~[-]

(17) History, professional ethics, and other information – ten (10) hours;[-]

(a) History of the barber profession;[-]

(b) Importance of barbering and its relation to civilization; ~~and~~[-]

(c) Business management, bookkeeping, shop management, and advertising.

Section 2. (1) A student shall complete the course of study required by Section 1 of this administrative regulation as required by KRS 317.540(1).

(2) ~~Each student shall receive at least one (1) hour;~~

~~(a) A~~**[per]** week~~shall be~~ devoted to the teaching and explanation of KRS Chapter 317 and 201 KAR Chapter 14; ~~and~~

~~(b) Of combined lecture and demonstration each day.~~

Section 3. (1) A microscope shall be part of the school's equipment to enable a student to study the structure of the hair and scalp.

(2) There shall be a reference library including a medical dictionary, books on anatomy and physiology and other books dealing with the functions of the human body which are applicable to the proper practice of the barber profession.

HARTSEL STOVALL, Vice-Chair

APPROVED BY AGENCY: February 10, 2014

FILED WITH LRC: February 12, 2014 at 9 a.m.

CONTACT PERSON: Sonja Minch, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road Suite 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Barbering  
(As Amended at ARRS, May 13, 2014)**

**201 KAR 14:115. Examinations; school and board.**

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(e) requires the board to promulgate an administrative regulation to establish examination requirements. This administrative regulation establishes examination applications and sets forth scores for passing.

Section 1. **(1)(a) The requirements in this administrative regulation shall apply to all examinations given by the board, unless stated otherwise.**

**(b) A probationary license shall be required to take the barber's examination.**

**(c) A barber's license shall be required to take the instructor's examination.**

**(2) A student from a barber school shall not take any of the board's examinations:**

**(a) Without proof of a high school diploma, transcript, or GED certificate; and**

**(b) Unless the application for examination has reached the board's headquarters at least seven (7) days prior to the date of the examination.**

**(3) An applicant for a board examination shall complete the appropriate application form, incorporated by reference in this administrative regulation. ~~A~~**[No]** ~~student from a barber school shall not~~ **[will be permitted to]** ~~take the board's examination if that student's~~ **[whose]** ~~application for examination has not reached the board's headquarters at least seven (7) days prior to the date of the examination]~~**

Section 2. The board's examination ~~shall~~**[will]** be given only to students who:

**(1) Have been notified to appear for the examination;**

**(2) ~~and who~~ Are wearing a clean, washable uniform; ~~and~~**

**(3) ~~and~~ Have instruments to be used in the giving of their demonstrations.**

Section 3. The board's examination ~~shall~~ include:

**(1) A written examination that covers ~~is both written in~~ all subjects set forth in the administrative regulations relating to barbers, **201 KAR Chapter 14; and****

**(2) A practical demonstration on a living model ~~is required as part of the examination~~.**

Section 4. **An applicant shall pass each portion, practice and theory, of the probationary examination with a seventy-five (75) percent passing grade on the board's examination. ~~An average grade of seventy-five (75) percent in theory and practice will be required as a passing grade on the board's examination.~~**

Section 5. **An applicant for an ~~All applicants for~~ instructor's license shall ~~must~~ **[score/make]** a general average of eighty (80) percent on the board's examination.**

Section 6. A student who works in a barber shop prior to passing the ~~probationary~~**[apprentice]** examination given by the board ~~shall~~**[will]** **not be allowed to take the probationary examination until first:**

**(1) Paying a fine, as defined in KRS 317.590, in keeping with the seriousness of the violation and the facts of the case; and**

**(2) Meeting all the requirements of KRS Chapter 317 and 201 KAR Chapter 14 ~~be considered ineligible to take the examination~~.**

Section 7. **The examination schedule shall be conspicuously displayed on a bulletin board provided by the school. ~~A bulletin board shall~~ **[must]** ~~be provided by a school and the examination schedule shall~~ **[must]** ~~be conspicuously displayed thereon.~~**

Section 8. Written and oral tests ~~shall~~**[must]** be given at intervals by a school to determine the status of the student.

**Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:**

**(a) "Probationary Barber's Application for Examination," 6/13;**

**(b) "Barber's Application for Examination," 6/13; and**

**(c) "Instructor's Application for Examination," 10/13.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, KY 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.**

FRANCIS L. SIMPSON, Chair

APPROVED BY THE BOARD: January 13, 2014

FILED WITH LRC: January 14, 2014 at 8 a.m.

CONTACT PERSON: Francis L. Simpson, Board Chair, Kentucky Board of Barbering, 9114 Leesgate Road Suite 6, Louisville, Kentucky 40222, phone (502) 429-7148, fax (502) 429-7149.

**TOURISM, ARTS AND HERITAGE CABINET**  
**Kentucky Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, May 13, 2014)**

**301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.**

RELATES TO: KRS 150.010, 150.170(4), 150.180, 150.990  
STATUTORY AUTHORITY: KRS 150.025(1), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator permits to landowners who enroll property for public hunting access. KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having visible polished antler protruding above the hairline.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "At-large north" means any portion of the elk zone not included in a limited entry area and that lies north of US Hwy 15.

(4) "At-large south" means any portion of the elk zone not included in a limited entry area and that lies south of US Hwy 15.

(5) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife, but does not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planning or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(6) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(7) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

(8) "Elk" means *Cervus elaphus nelsoni*.

(9) "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a post-season antlerless elk quota hunt.

(10) "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for at least five (5) years.

(11) "Limited Entry Area" or "LEA" means a designated area in the restoration zone with specific management restrictions.

(12) "Out-of-zone" means all counties not included in the restoration zone.

(13) "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

(14) "Spike" means an elk having one (1) or two (2) antler points on each side.

(15) "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage.

A person authorized to destroy an elk shall:

(1) Attach a department-issued disposal permit to an elk prior to moving the carcass; and

(2) Not remove the disposal permit until the carcass is processed.

Section 3. Elk Quota Hunts. (1) The elk quota hunt application period shall be January 1 to April 30.

(2) An applicant shall:

(a) Complete the elk quota hunt application process on the department's Web site at fw.ky.gov; and

(b) Pay a nonrefundable application fee of ten (10) dollars.

(3) The commissioner may extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period.

(4) There shall be a random electronic drawing from each applicant pool.

(5) Youth may enter a separate drawing pool for ten (10) either-sex elk permits that shall be valid for use during all elk seasons:

(a) Anywhere in the at-large north or at-large south portions of the restoration zone; or

(b) Within an LEA if the youth applies for and is drawn for an LEA, pursuant to Section 5(3) of this administrative regulation.

(6) A youth applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(7) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunts as established in subsection (12) of this section.

(8) A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in any other elk quota hunt held during the same calendar year.

(9) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn in the youth-only elk quota hunt in subsequent years.

(10) No more than ten (10) percent of all drawn applicants in each quota hunt pool shall be nonresidents.

(11) A quota hunt permit awarded from any department-administered drawing shall not be transferable.

(12) In addition to the youth-only quota hunt, there shall be four (4) separate regular elk quota hunts consisting of:

(a) Antlered archery and crossbow;

(b) Antlered firearms;

(c) Antlerless archery and crossbow; and

(d) Antlerless firearms.

(13) An applicant shall:

(a) Apply only once for an individual elk quota hunt;

~~(b) [Not apply for more than two (2) of the four (4) quota hunts established in subsection (12) of this section];~~

~~(c) [Not be eligible to be drawn in more than one (1) of the four (4) quota hunt pools];~~

~~(c) [(d)] Only be selected by a random electronic drawing; and~~

~~(d) [(e)] Pay a nonrefundable application fee of ten (10) dollars for each entry.~~

(14) A person who is drawn for an antlered elk quota hunt shall be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

(15) A person who does not have access to the department's Web site to apply for any quota hunt may contact the department toll free at 1-800-858-1549 for assistance in applying.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner shall issue to a landowner cooperator:

(a) One (1) either-sex permit annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement;

(b) Two (2) antlerless-only permits annually per 5,000 acres of land enrolled with the department in a hunting access agreement for the duration of the agreement; or

(c) One (1) antlerless-only permit annually per 5,000 acres of land enrolled with the department in an elk hunting access

agreement for the duration of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit shall be transferable, but shall only be used on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide the department with the hunter's:

1. Name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) A person shall carry proof of purchase of a valid Kentucky hunting license and valid elk permit while hunting, unless exempted by KRS 150.170.

(2) The statewide bag limit shall be one (1) elk per hunter per license year.

(3) A drawn hunter may apply to hunt in up to three (3) areas in any combination of limited entry and at-large areas by completing the application process on the department's Web site.

(a) Up to five (5) drawn hunters may apply for their LEA choices as a party.

(b) If the party is drawn for the LEA, all hunters in the party shall be assigned to that same LEA.

(c) If the number of slots remaining in the quota is less than the number of hunters in the next party selected, the entire party shall be assigned to the party's next choice ranking or to an at-large area.

(4) A hunter who does not apply for an LEA or is not drawn for an LEA shall be assigned by the department to either the:

- (a) At-large north portion of the elk zone; or
- (b) At-large south portion of the elk zone.

(5) A hunter drawn for an LEA may hunt only in the assigned LEA, except that a person who is drawn for any elk quota hunt may hunt on his or her land within the restoration zone.

(6) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(7) An elk hunter shall not:

- (a) Take elk except during daylight hours;
- (b) Use dogs, except to recover wounded elk using leashed tracking dogs;
- (c) Hunt over bait inside the elk restoration zone;
- (d) Drive elk from outside the assigned area;
- (e) Take an elk while it is swimming;
- (f) Use electronic calls or electronic decoys; or
- (g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that a disabled hunter who has a hunting method exemption permit issued pursuant to 301 KAR 3:027 may use a stationary vehicle as a hunting platform.

(8) A person shall:

- (a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and
- (b) Display the vehicle tag in the windshield of the vehicle while hunting elk.

(9) A ~~youth~~[person under sixteen (16) years old] shall be accompanied by an adult who shall remain in a position to take immediate control of the ~~youth's~~[person's] firearm.

(10) An adult accompanying a ~~youth~~[person under sixteen (16) years old] shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(11) A hunter may use any deer hunting method authorized by 301 KAR 2:172.

(12) A person shall not use the items listed in paragraphs (a) through (f) of this subsection[any of the following items] to take an

elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270 inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(13) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(14) A hunter drawn for a firearms elk permit shall hunt **elk** pursuant to that permit only during the seven (7) day period assigned during the initial drawing.

(15) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of the antlered-only or antlerless-only quota hunts and shall hunt in accordance with the seasons and limits established in Section 6 of this administrative regulation.

(16)[(15)] A person who is drawn for an archery or crossbow permit or has a landowner or special commission permit may hunt with a crossbow during all archery and crossbow seasons, if at the time of the hunt, the person:

- (a) Is a youth;
- (b) Is sixty-five (65) years or older; or

(c) Has a crossbow hunting method exemption permit for hunting deer pursuant to 301 KAR 3:027.

Section 6. Elk Quota Hunt Seasons and Limits. (1) A person drawn for an antlerless or antlered archery and crossbow permit shall not hunt when an elk firearms season is open.

(2) A person drawn for an antlered archery and crossbow permit shall use:

(a) Archery equipment to take an antlered elk beginning the third Saturday in September through the third Monday in January; and

(b) A crossbow to take an antlered elk:

1. For two (2) consecutive days beginning the third Saturday in October; and
2. From the second Saturday in November through December 31.

(3) A person drawn for an antlerless archery and crossbow permit shall use:

(a) Archery equipment to take an antlerless elk beginning the third Saturday in October through the third Monday in January; and

(b) A crossbow to take an antlerless elk:

1. For two (2) consecutive days beginning the third Saturday in October; and
2. From the second Saturday in November through December 31.

(4) A person drawn for an antlered firearms permit shall use a modern gun or muzzleloader to take an antlered elk during one (1) of ~~the following~~ two (2) seven (7) day periods randomly assigned by the department from the:

- (a) First Saturday in October for seven (7) consecutive days; or
- (b) Second Saturday in October for seven (7) consecutive days.

(5) A person drawn for an antlerless firearms permit shall use a modern gun or muzzleloader to take an antlerless elk during one (1) of ~~the following~~ two (2) seven (7) periods randomly assigned by the department from the:

- (a) Second Saturday in December for seven (7) consecutive days; or
- (b) Third Saturday in December for seven (7) consecutive days.

Section 7. LEA boundaries. (1) Caney LEA – Starting at the Intersection of State Hwy 550 and Kentucky 1697, the boundary proceeds north on State Hwy 550 through Mousie and Betty to the intersection with State Hwy 7 near Lackey. The boundary then goes south on State Hwy 7, past Dema to intersection with State Hwy 899. The boundary then goes south on State Hwy 899,



through Pippa Passes to intersection with Kentucky 1697 at Alice Lloyd College. The boundary then goes west on Kentucky 1697 to intersection with State Hwy 550 in Garner, completing the boundary.

(2) Hazard LEA - Starting at the intersection of State Hwy 476 and State Hwy 80, the boundary proceeds east on Hwy 80 to the intersection with State Hwy 3209. The boundary then goes west on Hwy 3209 to the intersection with State Hwy 1087. The boundary then goes east on Hwy 1087 to the intersection with State Hwy 1098 near Yellow Mountain. The boundary then follows Hwy 1098 north and west to the intersection with State Hwy 15 near Quicksand. The boundary then goes south on Hwy 15 to the intersection with State Hwy 476 near Lost Creek. The boundary then goes south on Hwy 476 to the intersection with State Highway 80, completing the boundary.

(3) Straight Creek LEA - Starting at the intersection of State Hwy 66 and State Hwy 221 at Straight Creek, the boundary proceeds east on State Hwy 221 to the intersection with State Hwy 2009. The boundary then proceeds north along State Hwy 2009 to the intersection with US Route 421. The boundary then proceeds north on US Route 421 to the intersection with State Hwy 406 near Stinnett. The boundary then follows State Hwy 406 west to the intersection with State Highway 66. The boundary then follows State Hwy 66 south to the intersection with Hwy 221 to complete the boundary.

Section 8. Post-season Quota Hunt on Private Land. (1) A modern firearms quota hunt for antlerless elk and spikes shall take place beginning on the fourth Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants who:

- (a) Were not drawn for the previous elk quota hunts; and
- (b) Are residents of counties included, wholly or in part, within an EMU boundary.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be:

(a) Knott County EMU - Starting at the intersection of KY Route 777 and KY Route 550 near Porter Junction, the boundary proceeds east along KY Route 777 to the intersection with KY Route 680. The boundary then proceeds east along KY Route 680 to the intersection with KY Route 122 at Minnie. The boundary proceeds south along KY Route 122 to the intersection with KY Route 1498 near Bevinville. The boundary then continues south on KY Route 1498 to the intersection with KY Route 7. The boundary then proceeds south on KY Route 7 to the intersection with KY Route 1410. The boundary then proceeds west on KY Route 1410 to the intersection with KY Route 160. The boundary then proceeds north on KY Route 160 to the intersection with KY Route 550 in Hindman. The boundary then proceeds north on KY Route 550 to the intersection with KY Route 7, with which KY Route 550 merges and both continue north, to the intersection with KY Route 777 near Porter Junction, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersection with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. (1)

Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(a) Record on a hunter's log the following information:

- 1. The species harvested;
- 2. The sex of the animal;
- 3. Date of harvest; and
- 4. County of harvest; and

(b) Check the harvested elk by:

1. Calling (800) 245-4263 and providing the requested information; or

2. Completing the online check-in process at fw.ky.gov.

(2) If a harvested elk leaves the possession of the hunter, the hunter shall attach to the carcass a hand-made tag that contains the hunter's:

- (a) Confirmation number;
- (b) Name; and
- (c) Telephone number.

(3) A person shall not provide false information in:

- (a) Completing the hunter's log;
- (b) Checking an elk; or
- (c) Creating a carcass tag.

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on the areas listed in paragraphs (a) through (f) of this subsection~~[Wildlife Management Areas (WMA), Hunter Access Areas, state forests, the Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest]~~ within the restoration zone pursuant to the conditions of the permit received:~~[-]~~

(a) Wildlife Management Areas;

(b) Hunter Access Areas;

(c) State forests;

(d) Big South Fork National River and Recreation Area;

(e) Daniel Boone National Forest; or

(f) Jefferson National Forest.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established in Section 6 of this administrative regulation.

(b) A firearm shall not be used to hunt elk.

(5) A person shall not mimic the sound of an elk on public land open to elk hunting from September 1 until the opening of the elk archery season.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person taking elk outside of the restoration zone, except that a hunter shall not use any of the items listed in paragraphs (a) through (f) of this subsection~~[following]~~ to take elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm less than .270 caliber;

(c) A muzzle-loading firearm less than .50 caliber;

(d) A shotgun less than twenty (20) gauge;

(e) Any arrow without a broadhead point; or

(f) A handgun:

1. With a barrel length of less than six (6) inches;

2. With a bore diameter of less than .270 caliber; and

3. That produces less than 550 foot-pounds of energy at 100 yards.

(2) Unless exempted by KRS 150.170, a person who is hunting out-of-zone elk shall possess:

(a) A valid Kentucky hunting license; and

(b) An out-of-zone elk permit.

(3) A person may take an elk of either sex, which shall not count toward the person's deer bag limit.

(4) Any elk harvested out-of-zone shall be telechecked pursuant to Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

Section 13. A person who is the recipient of a valid elk quota hunt permit, landowner cooperator permit, or special commission permit may defer use of the permit to the following year if:

(1) There is a death of the permit holder's:

(a) Spouse;

(b) Child; or

(c) Legal guardian, if the permit holder is under eighteen (18) years old; and

(2) The permit holder provides to the department a death certificate and one (1) of the following documents prior to May 1 of the year following the hunting season:

(a) A marriage certificate;

(b) A birth certificate; or

(c) An affidavit of paternity or maternity.

MATT SAWYERS, Acting Commissioner

ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: March 12, 2014

FILED WITH LRC: March 13, 2014 at 4 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

**JUSTICE AND PUBLIC SAFETY  
Department of State Police  
Driver Testing Branch  
(As Amended at ARRS, May 13, 2014)**

**500 KAR 8:030. Administration of breath alcohol tests and chemical analysis tests.**

RELATES TO: KRS 189A.103

STATUTORY AUTHORITY: KRS 15A.160, 189A.103

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.103(3)(a) requires the cabinet to promulgate administrative regulations establishing procedures for administering breath alcohol tests and chemical analysis tests of blood and urine. This administrative regulation establishes procedures for administering those tests.

Section 1. The[following] procedures established in this section shall apply to breath alcohol tests.[:]

(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.

(2) A breath alcohol concentration test shall consist of the following steps in this sequence:

(a) Ambient air analysis;

(b) Alcohol simulator analysis;

(c) Ambient air analysis;

(d) Subject breath sample analysis; and

(e) Ambient air analysis.

(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.02[0.04] alcohol concentration units.

Section 2. The[following] procedures established in this section shall apply regarding chemical tests of blood for alcohol or other substances.[:]

(1) The blood sample shall be collected in the presence of a peace officer, or, at the direction of the officer, another person who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) The blood sample shall be collected by the following method:

(a) Ethyl alcohol (ethanol) shall not be used to clean the skin where a blood sample is to be collected; and[:]

(b) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(4) Individual blood collecting containers shall be labeled to provide the following information:

(a) The name of the person from which the blood sample is collected;

(b) The date and time the blood sample is collected;

(c) The name of the person and agency collecting the blood sample;

(d) The name of the officer and agency requesting the collection of the blood sample; and

(e) The complete uniform citation number if available.

(5) The blood sample shall be delivered to a forensic laboratory branch of the Department of State Police or other clinical laboratory as designated by the State Police.

Section 3. The[following] procedures established in this section shall apply regarding chemical analysis of urine for substances of abuse or impairment including alcohol.[:]

(1) A urine sample shall be collected in the presence of a peace officer, or, at the direction of the officer, another person who can authenticate the sample. The witnessing person shall be of the same sex as the person providing the urine sample.

(2) The urine sample shall be collected from the subject person's voiding of his or her bladder. This urine sample may be tested for substances of abuse or impairment including alcohol.

(3) The urine sample shall be collected in a clean, dry container[containers]. Preservatives shall not be used.

(4) The urine sample container shall be labeled to provide the following information:

(a) The name of the person from whom the urine sample is collected;

(b) The date and time the urine sample is collected;

(c) The name of the person and agency collecting the urine sample;

(d) The name of the officer and agency requesting the collection of the urine sample; and

(e) The complete uniform citation number if available.

(5) The urine sample shall be delivered to a forensic laboratory branch of the Department of State Police or other clinical laboratory as designated by the State Police.

J. MICHAEL BROWN, Secretary

APPROVED BY AGENCY: February 13, 2014

FILED WITH LRC: February 14, 2014 at 11 a.m.

CONTACT PERSON: Danielle Street, Paralegal, Kentucky State Police, Legal Division, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1784, fax (502) 573-1636.

**JUSTICE AND PUBLIC SAFETY CABINET  
Department of Corrections  
(As Amended at ARRS, May 13, 2014)**

**501 KAR 6:020. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

## VOLUME 40, NUMBER 12 – JUNE 1, 2014

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures," May 13~~March 14~~2014~~December 40, 2013~~, are incorporated by reference. Department of Corrections Policies and Procedures include:

- 1.2 News Media (Amended 5/13/14~~3/14/14~~12/08/09)
- 1.4 The Monitoring and Operation of Private Prisons (Amended 5/15/08)
- 2.1 Inmate Canteen (Amended 10/12/12)
- 2.12 Abandoned Inmate Funds (Amended 3/14/14~~6/12/12~~)
- 3.1 Code of Ethics (Amended 12/10/13)
- 3.5 Sexual Harassment and Anti-Harassment (Amended 12/10/13)
- 3.9 Student Intern Placement Program (Added 9/13/2010)
- 3.10 Appearance and Dress for Nonuniformed Staff (Amended 9/13/10)
- 3.11 Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
- 3.14 Employee Time and Attendance Requirements (Amended 3/14/14~~Added 9/13/2010~~)
- 3.17 Uniformed Employee Dress Code (Amended 8/20/13)
- 3.22 Staff Sexual Offenses (Amended 12/10/13)
- 3.23 Internal Affairs Investigation (Added 8/25/09)
- 5.1 Research and Survey Projects (Amended 12/10/13)
- 5.3 Program Evaluation and Measurement (Amended 6/12/12)
- 6.1 Open Records Law (Amended 5/14/07)
- 8.2 Fire Safety (Amended 3/14/14~~2/15/06~~)
- 8.7 Notification of Extraordinary Occurrence (Amended 3/14/14~~12/13/05~~)
- 9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 12/17/12)
- 9.6 Contraband (Amended 3/14/14~~6/12/12~~)
- 9.8 Search Policy (Amended 5/13/14~~12/40/13~~)
- 9.13 Transport to Court - Civil Action (Amended 07/09/07)
- 9.18 Informants (Amended 9/13/10)
- 9.19 Found Lost or Abandoned Property (Amended 10/14/05)
- 9.22 Control and Use of Caustic/Toxic Materials (Added 3/14/14)~~9.20 Electronic Detection Equipment (Amended 10/14/05)~~
- 10.2 Special Management Inmates (Amended 8/20/13)
- 10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
- 11.2 Dietary Procedures and Compliance~~Nutritional Adequacy of Inmate Diet~~ (Amended 3/14/14~~5/15/08~~)
- 11.4 Alternative Dietary Patterns (Amended 3/14/14~~5/15/08~~)
- 13.1 Pharmacy Policy and Formulary (Amended 3/14/14~~8/25/09~~)
- 13.2 Health Maintenance Services (Amended 3/14/14~~11/9/10~~)
- 13.3 Medical Alert System (Amended 3/14/14~~10/14/05~~)
- 13.5 Advance Healthcare Directives (Added 4/12/05)
- 13.6 Sex Offender Treatment Program (Amended 5/15/08)
- 13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
- 13.8 Substance Abuse Program (Amended 10/12/12)
- 13.9 Dental Services (Amended 10/14/05)
- 13.10 Serious Infectious Disease (Amended 3/14/14~~12/13/05~~)
- 13.11 Do Not Resuscitate Order (Amended 8/9/05)
- 13.12 Suicide Prevention and Intervention Program (Added 8/25/09)
- 13.13 Mental Health Services (Added 8/20/13)
- 14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
- 14.2 Personal Hygiene Items (Amended 8/20/13)
- 14.3 Marriage of Inmates (Amended 10/14/05)
- 14.4 Legal Services Program (Amended 3/14/14~~07/09/07~~)
- 14.5 Board of Claims (Amended 10/14/05)
- 14.6 Inmate Grievance Procedure (Amended 3/14/14~~8/20/13~~)
- 14.7 Sexual Abuse Prevention and Intervention Programs (Amended 12/10/13)
- 15.1 Hair, Grooming and ID Card Standards (Amended 10/12/12)
- 15.2 Rule Violations and Penalties (Amended

- 3/14/14~~9/13/10~~)
- 15.3 Meritorious Good Time (Amended 12/13/05)
- 15.4 Program Credit (Amended 6/12/12)
- 15.5 Restoration of Forfeited Good Time (Amended 5/14/07)
- 15.6 Adjustment Procedures and Programs (Amended 3/14/14~~10/14/05~~)
- 15.7 Inmate Accounts~~Account—Restriction~~ (Amended 3/14/14~~11/9/10~~)
- 15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
- 16.1 Inmate Visits (Amended 10/12/12)
- 16.2 Inmate Correspondence (Amended 8/20/13)
- 16.3 Inmate Access to Telephones (Amended 10/12/12)
- 16.4 Inmate Packages (Amended 07/09/07)
- 17.1 Inmate Personal Property (Amended 8/20/13)
- 17.2 Assessment Center Operations (Amended 11/15/06)
- 17.3 Controlled Intake of Inmates (Amended 3/14/14~~5/15/08~~)
- 17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
- 18.1 Classification of the Inmate (Amended 07/09/07)
- 18.2 Central Office Classification Committee (Amended 8/20/13)
- 18.5 Custody and Security Guidelines (Amended 3/14/14~~6/12/12~~)
- 18.7 Transfers (Amended 07/09/07)
- 18.9 Out-of-state Transfers (Amended 2/15/06)
- 18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
- 18.13 Population Categories (Amended 07/09/07)
- 18.15 Protective Custody (Amended 11/15/06)
- 18.16 Information to the Parole Board (Effective 3/14/14~~11/15/06~~)
- 18.17 Interstate Agreement on Detainers (Amended 07/09/07)
- 18.18 International Transfer of Inmates (Amended 5/14/07)
- 19.1 Governmental Services Program (Amended 10/12/12)
- 19.2 Sentence Credit for Work (Added 2/13/04)
- 19.3 Inmate Wage/Time Credit Program (Amended 8/20/13)
- 20.1 Educational Programs and Educational Good Time (Amended 8/25/09)
- 21.1 Library Services (Added 3/14/14)
- 22.1 Privilege Trips (Amended 10/14/05)
- 22.2 Recreation and Inmate Activities (Added 3/14/14)
- 23.1 Religious Programs (Amended 8/20/13)
- 25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
- 25.3 Prerelease Program (Effective 11/15/06)
- 25.4 Institutional Inmate Furloughs (Amended 07/09/07)
- 25.6 Community Center Program (Amended 07/09/07)  
~~[25.8 Extended Furlough (Amended 4/12/05)]~~
- 25.10 Administrative Release of Inmates (Amended 11/9/10)
- 25.11 Victim Services Notification (Amended 8/25/09)
- 26.1 Citizen Involvement and Volunteer Service Program (Amended 10/12/12)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: March 6, 2014

FILED WITH LRC: March 14, 2014 at 10 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Department of Corrections, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
(As Amended at ARRS, May 13, 2014)

**601 KAR 1:230. Education and safety training for motor carrier operations.**

RELATES TO: KRS 281.900, 281.905, 29 C.F.R. 1910, 49 C.F.R. 40.1 to 40.413, 100-185, 382.101 - 382.605, 383.1 - 383.155, 390.1- 390.46, 399.201-399.211

STATUTORY AUTHORITY: KRS 281.900, 281.907

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.900 authorizes the Kentucky Motor Carrier Advisory Committee to advise the executive and legislative branches of government on motor carrier issues. KRS 281.907 requires the committee to promulgate an administrative regulation to establish standards for educational training courses and safety requirements related to motor carrier operations. This administrative regulation establishes the requirements for training courses, the standards for instructors, and the duties of the Motor Carrier Advisory Committee (~~[""]~~committee~~[""]~~) in monitoring the training.

Section 1. Training Courses. (1) A course in motor carrier operations and safety shall be required for:

- (a) A motor carrier that registers or renews a Kentucky International Registration Plan license plate; or
- (b) An intrastate motor carrier that registers or renews a motor vehicle with a gross weight in excess of 26,000 pounds.

(2) A representative of the motor carrier considered eligible for the training course shall include~~the~~:

- (a) The owner of a motor carrier company;
- (b) The individual employee responsible for safety management; or
- (c) Another person or persons within the company assigned by the safety officer to be trained.

(3) An independent contractor or consultant shall not be considered a representative of the carrier eligible for the training course.

(4) A motor carrier shall complete~~the following training hours~~ annually:

- (a) Four (4) hours classroom training; or
- (b) Two (2) hours online training.

Section 2. Application for Designation. (1) An educational organization or an association whose members are motor carriers may apply to the committee for designation to conduct training.

(2) An applicant for designation to provide training shall submit a completed Application for Providers and Courses for Motor Carrier Training, TC 95-626, to the Motor Carrier Advisory Committee.

**(a) The completed Application for Providers and Courses for Motor Carrier Training, TC 95-626, shall be received at least seven (7) days prior to the next committee meeting in order to be considered at that meeting.**

**(b) A completed Application for Providers and Courses for Motor Carrier Training, TC 95-626, received after the deadline established in paragraph (a) of this subsection shall be considered at the next committee meeting.**

(3) An applicant shall be qualified to transact business in Kentucky by appropriate filings in the office of the Kentucky Secretary of State.

(4) An Application for Providers and Courses for Motor Carrier Training, TC 95-626, shall be reviewed by the committee within ninety (90) days of submission.

(5) An applicant and classroom instructor shall have at least two (2) years of experience in commercial truck safety training.

(6) An applicant shall offer training on-line and in a classroom setting and offer a classroom training course in each of the twelve (12) highway districts at least one (1) time per calendar year.

(7) On request, the committee shall receive a copy of the training advertising materials from the approved provider.

(8) An applicant shall provide an interactive web service and

the capability to transmit data electronically within six (6) hours of course completion ensuring that the cabinet may electronically monitor or track online motor carrier training.

(9) An applicant designated to conduct training shall be recertified by the committee every two (2) years.

Section 3. Course Requirements. (1) Classroom training shall be a minimum of four (4) hours in length.

(2) Online training shall be a minimum of two (2) hours in length.

(3) A training course shall include at least one (1) of the following:

(a) Information included in the Federal Motor Carrier Safety Regulation, 49 C.F.R. 40.1 - 40.413, 382.101 - 382.605, 383.1- 383.155, 390.1-390.46, and 399.201-399.211;

(b) Information included in 29 C.F.R. 1910, the Federal Occupational Safety and Health administrative regulations;

(c) Information related to federal hazardous materials included in 49 C.F.R. Parts 100-185;

(d) An overview of the cabinet's Department of Vehicle Regulation and information related to commercial trucks and drivers; or

(e) Commercial truck driver safety training.

Section 4. Guidelines for Classroom Management. (1) A training course shall be available to motor carriers operating in Kentucky subject only to space limitations.

(2) In December of each calendar year, a provider shall submit to the committee a continuing education classroom schedule for the upcoming year that identifies the:

- (a) Course provider;
- (b) Course title and content; and
- (c) Date, time, and location of the class.

(3) A provider shall maintain a classroom roster that shall be available to the committee upon request.

(4) **Except in cases of emergency, such as inclement weather,** a provider shall notify the committee and the motor carriers registered for scheduled classroom training thirty (30) days prior to a change in the scheduled classroom location, date, or time.

(5) Following the course, a provider shall perform trainee testing to insure and demonstrate an understanding of the course material.

(6) A provider shall issue a completion of training certificate that includes the:

- (a) Name of course;
- (b) Date;
- (c) Motor carrier name and address;
- (d) Motor carrier DOT number; and
- (e) Provider contact information.

(7) Certification to conduct training courses shall be withdrawn by the committee for:

(a) An action by an instructor **that results in a civil or criminal judgment that may impact or impair the instructor's ability to teach the course[contrary to state law];**

(b) **Deliberate** falsification of information submitted to the committee; or

(c) Conducting a course that is not preapproved.

(8) A member of the committee or a designee may monitor a class offered by the provider at any time without cost.

Section 5. Appeal Process. (1) An applicant whose approval is denied or a provider whose certification is withdrawn may appeal the committee's decision.

(2) An appeal shall be:

- (a) In writing;
- (b) Received by the committee with thirty (30) days from the date of the decision denying approval or withdrawing certification; and
- (c) Conducted in accordance with KRS Chapter 13B.

Section 6. Incorporation by Reference. (1) "Application for Providers and Courses for Motor Carrier Training," TC 95-626,

~~May/January,~~ 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, 200 Mero Street, Frankfort, Kentucky 40622. This material may also be obtained by accessing the cabinet's Web site at <http://transportation.ky.gov/>.

MICHAEL W. HANCOCK, P. E., Secretary

RODNEY KUHL, Commissioner

D. ANN DANGELO, Office of Legal Services

APPROVED BY AGENCY: February 19, 2014

FILED WITH LRC: February 20, 2014 at noon

CONTACT PERSON: D. Ann DAngelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

# LABOR CABINET

## Kentucky Occupational Safety and Health Review Commission (As Amended at ARRS, May 13, 2014)

### 803 KAR 50:010. Hearings; procedure, disposition.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 13B.020(3)(e)2a, 338.071, 338.081, 338.141

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Occupational Safety and Health Review Commission is authorized by KRS 338.071 and 338.081 to hear and rule on appeals from citations, notifications, and variances and ~~adopt and~~ promulgate ~~rules and~~ administrative regulations with respect to the procedural aspect of its hearings. According to KRS 13B.020(3)(e)2a, these occupational safety and health hearings are conducted under the authority of KRS 338.071(4), 338.081, and 338.141(3) rather than the hearing procedures in KRS Chapter 13B. This administrative regulation establishes procedures ~~is to provide~~ for these hearings and their proper disposition.

Section 1. Definitions. ~~[As used herein:]~~ (1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.

(2) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of the employee's/his assigned duties.

(3) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(4) "Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.

(5) "Commission" means the Kentucky Occupational Safety and Health Review Commission.

(6) "Commissioner" means the commissioner of the Department of Workplace Standards, Labor Cabinet.

(7) "Day" means a calendar day.

(8) "Executive director" means the executive director of the [review] commission.

(9) "Hearing officer" means a hearing officer appointed by the commission pursuant to KRS 338.071(5) and 338.081.

(10) "Natural person" means an employer whose business is organized as a proprietorship or an affected employee who is not represented by a labor organization.

(11) "Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141(1).

(12) "Proceeding" means any proceeding before the commission or before a hearing officer.

(12) ~~(13)~~ "Representative" means an attorney authorized by a party or intervenor to represent him in a proceeding.

(13) ~~(14)~~ "Working day" means all days except Saturdays, Sundays, or federal or state holidays. ["Commission" means the Kentucky Occupational Safety and Health Review Commission.

(3) ~~"Commissioner" means the Commissioner of the~~

Department of Workplace Standards, Labor Cabinet.

(4) ~~"Executive Director" means the Executive Director of the Review Commission.~~

(5) ~~"Hearing Officer" means a hearing officer appointed by the commission pursuant to KRS 338.071 and 338.081.~~

(6) ~~"Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.~~

(7) ~~"Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.~~

(8) ~~"Representative" means any person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.~~

(9) ~~"Citation" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141.~~

(10) ~~"Notification of proposed penalty" means a written communication issued by the commissioner to an employer pursuant to KRS 338.141(1).~~

(11) ~~"Day" means a calendar day.~~

(12) ~~"Working day" means all days except Saturdays, Sundays, or federal or state holidays.~~

(13) ~~"Proceeding" means any proceeding before the commission or before a hearing officer.~~

(14) ~~Unless otherwise specified, definitions set forth in KRS 338.045 are hereby adopted by this review commission.]~~

Section 2. Meetings. (1) Regular meetings of the commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 10:00[44] a.m., unless changed to another date, place, or time by commission action.

(2) Special meetings ~~[may be called by the chairman or by two (2) members of the commission, and]~~ shall be held at ~~the[such]~~ times and places as the call directs.

(3) The commission shall be considered as in continuous session for the performance of administrative duties. ~~[(4) Two (2) members of the commission shall constitute a quorum.]~~

Section 3. Assignment of Hearing; Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commission. Further, the commission may, upon its own motion or on motion of a[any] party, if granted, hold hearings[,] as provided under KRS 338.071, in which case provisions of this administrative regulation relating to hearing officers and hearings shall apply if[where] applicable.

(2) A recommended order or adjudicated order by the hearing officer or the initial order of the review commission, if dismissed or disposed of as provided in subsection (1) of this section or if the commission sits for a hearing, shall become the final order of the commission[,] under the provisions of KRS 338.091, appealable to the Franklin Circuit Court[,] forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this administrative regulation. If reviewed[In the event of review] by the commission, an order of the commission determinative of issues before it shall become a final order as defined in KRS 338.091(1) upon date of issue.

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, #4 Millcreek Park, [Route #3, Millville Road,] Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the hearing officer issues a[the issuance of his] decision, all papers shall be filed with the hearing officer at the address given in the notice informing of ~~the[such]~~ assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director.

(4) Unless otherwise ordered, all filing may be accomplished by first-class mail.

(5) Filing is effective[deemed-effected] when mailed[at the time of mailing].

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Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) ~~The[these]~~ rules established by this administrative regulation shall govern all proceedings before the commission and its hearing officers.

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa.

(2) Words importing masculine gender may be applied to feminine~~or neuter gender~~ and vice versa.

Section 6. Computation of Time. (1) In computing a[any] period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal or state holiday, in which event the period runs until the end of the next day~~[which is]~~ not a Saturday, Sunday, or federal or state holiday. ~~If[When]~~ the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and federal or state holidays shall be excluded in the computation.

(2) ~~If[Where]~~ service of a pleading or document is by mail pursuant to Section 3 of this administrative regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading.

Section 7. Extensions of Time. Requests for extensions of time for the filing of a[any] pleading or document ~~shall[must]~~ be received in advance of the date on which the pleading or document is due to be filed.

Section 8. Record Address. The initial pleading filed by a[any] person shall contain the person's[his] name, address, and telephone number. A[Any] change in ~~this[such]~~ information ~~shall[must]~~ be communicated promptly to the hearing officer or the commission, as the case may be, and to all other parties and intervenors. A party or intervenor who fails to furnish ~~the[such]~~ information shall~~be deemed to~~ have waived the[his] right to notice and service under these rules.

Section 9. Service and Notice. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(2) Service upon a party or intervenor who has appeared through ~~an attorney[a representative]~~ shall be made only upon the attorney[such representative].

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first-class mail or by personal delivery. Service is ~~effective[deemed effected]~~ when mailed[at the time of mailing] (if by mail) or when personally delivered[at the time of personal delivery] (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of service which states[the same which sets forth] the date and manner of service. The[Such] statement shall be filed with the pleading or document.

(5) ~~If[Where]~~ service is accomplished by posting, proof ~~of[such]~~ posting shall be filed not later than the first working day following the posting.

(6) Service and notice to employees represented by an authorized employee representative shall ~~be[deemed]~~ accomplished by serving its attorney[the representative] in the manner prescribed in subsection (3) of this section.

(7) ~~If[In the event that]~~ there are~~[any]~~ affected employees who are not represented by an authorized employee representative, the employer shall~~;~~ immediately upon receipt of notice of contest or request for extension or modification of the abatement period~~;~~ post, where the citation is required to be posted by 803 KAR 2:125, Section 1(1), a copy of the notice of contest and a notice informing ~~the[such]~~ affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the

following form shall~~be deemed to~~ comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of the Department of Workplace Standards for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate ~~shall[should]~~ be sent to:

Kentucky Occupational Safety and Health Review Commission

#4 Millcreek Park~~[Route #3, Millville Road]~~

Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: (Place shall be reasonably convenient to employees, preferably at or near work place.)

(8) ~~If[Where]~~ appropriate, the second sentence of the~~[above]~~ notice required by subsection (7) of this section shall[will] be deleted and the following sentence shall[will] be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Workplace Standards for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(9) ~~The attorney for~~ the authorized employee representative, if any, shall be served with the notice required by subsections (7) and (8) of this section[set forth above] and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of ~~the[such]~~ hearing at or near the place where the citation is required to be posted by subsection (7) of this section.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on the attorney for the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date ~~the[such]~~ notice is received by the employer.

(12) ~~If[Where]~~ a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support~~[thereof]~~ shall be provided to the employer for posting in the manner prescribed in subsection (7) of this section.

(13) An authorized employee representative who files a notice of contest shall serve[be responsible for serving] any other authorized employee representative whose members are affected employees.

(14) ~~If[Where]~~ posting is required by this section,~~[such]~~ posting shall be maintained until the commencement of the hearing or until earlier disposition.

Section 10. Consolidation. Cases may be consolidated on the motion of a[any] party, on the hearing officer's own motion, or on the commission's own motion~~;~~ if there are[where there exist] common parties, common questions of law or fact, or both, or in~~[such]~~ other circumstances as justice and the administration of the Act require.

Section 11. Severance. Upon its own motion, or upon motion of a[any] party or intervenor, the commission or the hearing officer may, for good cause, order a[any] proceeding severed with respect to some or all issues or parties.

Section 12. Protection of Trade Secrets and Other Confidential Information. (1) Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by law, the hearing officer shall issue~~[such]~~ orders as may be appropriate to protect the confidentiality of those[such] matters.

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

Section 13. Employer or Employee Contests. (1) ~~If [Where]~~ a notice of contest is filed by an employer contesting a citation or notification issued pursuant to KRS 338.031(1)[338.434], 338.141(3), or 338.153, an employee or an authorized employee representative may elect party status by a request for intervention at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation within the time period a motion for dismissal is required to be posted.

(2) ~~If [Where]~~ a notice of contest is filed by an employee or by an authorized employee representative contesting a citation or notification issued pursuant to KRS 338.031(1)[338.141], 338.141(3), or 338.153, the employer may elect party status at any time before commencement of the hearing or, if no hearing is held, before notice of an executed settlement agreement has been served according to Section 51(3) of this administrative regulation within the time period a motion for dismissal is required to be posted.

Section 14. Intervention. (1) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing, or if there is in the event of a settlement or dismissal, before issuance of a recommended order.

(2) The petition shall state set forth the interest of the petitioner in the proceeding and show that participation of the petitioner will assist in the determination of the issues in question and that the intervention will not unnecessarily delay the proceeding.

(3) The commission or the hearing officer may grant a petition for intervention to ~~the [such an]~~ extent and upon ~~those [such]~~ terms as the commission or the hearing officer shall determine.

(4) The caption of all cases where intervention is allowed shall reflect ~~the [such]~~ intervention by adding, to the caption after the name of the respondent, the name of the intervenor followed by the designation intervenor.

Section 15. Representatives of Parties and Intervenors. (1) Except for natural persons who may represent themselves, a party or intervenor shall appear through ~~Any party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney.~~

(2) A representative of a party or intervenor shall ~~be deemed to~~ control all matters respecting the interest of ~~the [such]~~ party or intervenor in the proceeding.

(3) Affected employees who are represented by an authorized employee representative may appear only through ~~the [such]~~ authorized employee representative.

(4) Affected employees who are not represented by an authorized employee representative may elect party status by filing a request for intervention ~~In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.~~

(5) Withdrawal of appearance of a [any] representative may be effected by filing a written notice of withdrawal and by serving a copy of the notice thereof on all parties and intervenors.

Section 16. Variance Contests. (1) An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of ~~the [such]~~ ruling, file a notice of contest with the commissioner ~~of the Department of Workplace Standards~~. The commissioner ~~of the Department of Workplace Standards~~ shall transmit ~~the [such]~~ notice, together with the complete record in the matter as compiled before the commissioner ~~of the Department of Workplace Standards~~, to the commission within seven (7) days of receipt, under authority of KRS 338.071(4).

(2) The commission may on its own order or on motion of

a [any] party, if granted, consider the matter on the record or may require further hearing or filings of information in the matter.

(3) All pertinent provisions relating to contests of citations, if [where] applicable, shall apply.

Section 17. Request for Extension or Modification of Abatement. (1) A [Any] party adversely affected by a ruling of the commissioner ~~of the Department of Workplace Standards~~ on an [any] application for extension or modification of an abatement period may file an appeal from ~~the [such]~~ notification with the commissioner ~~of the Department of Workplace Standards~~, if [provided] an [such] appeal is filed within fifteen (15) working days from receipt of ~~the [such]~~ notice. The [Such] appeal shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.

(2) The commissioner ~~of the Department of Workplace Standards~~ shall transmit ~~the [such]~~ appeal to the commission ~~{[within seven (7) days after its receipt, together with all pertinent and relevant records considered by the commissioner [of the Department of Workplace Standards] in making the [his] ruling.~~

(3) The commissioner ~~of the Department of Workplace Standards~~ shall file a response to ~~the [such]~~ appeal within ten (10) days of receipt of notice of ~~the [such]~~ appeal.

(4) The commission may on its own order or on motion of a [any] party, if granted, consider the matter on the record or may require further hearing, pleading, or information in the matter.

Section 18. Form. (1) Except as provided in this section [herein], there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 19 of this administrative regulation which shall include the commission's docket number ~~[, if assigned, ]~~ and a clear and plain statement of the relief that is sought, together with the grounds for the requested relief [therefor].

(2) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced.

(3) Pleadings shall be signed by the party filing or by the party's [his] representative. ~~[Such]~~ Signing constitutes a representation ~~[by the signer]~~ that the signer [he] has read the document or pleading; that to the best of the signer's [his] knowledge, information, and belief, the [that] statements made therein are true, and that it is not interposed for delay.

(4) The commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (1), (2), and (3) of this section.

(5) All pleadings shall be filed in duplicate unless otherwise indicated.

(6) A [Unless otherwise designated in this administrative regulation, any] pleading shall be assumed to be [as admitted as] correct as submitted unless a reply or denial is received within ten (10) days of receipt of ~~the [such]~~ pleading.

Section 19. Captions. (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Workplace Standards, Complainant v. (Name of Contestant), Respondent.

(2) Cases initiated from an adverse ruling of the commissioner of the Department of Workplace Standards relative to a variance or by a request for extension or modification of the abatement period shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Workplace Standards, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits) filed.

(4) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page ~~[,]~~ opposite the title, the docket number ~~[, if known,]~~ assigned by the commission.

Section 20. Notices of Contest of Citations. (1) Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.

(2) If [When] a notice of contest is received by the

commissioner, the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the commissioner.

(3) Complaint.

(a) The commissioner shall file a complaint with the commission no later than twenty (20) days after receiving[his receipt of] the notice of contest.

(b) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity:

1. The basis for jurisdiction;

2. The time, location, place, and circumstances of each[such] alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) If[Where] the commissioner seeks in the[his] complaint to amend the[his] citation or proposed penalty, the commissioner shall state[he shall set forth] the reasons for amendment and shall state with particularity the change sought.

(4) Answer.

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied is[shall be deemed] admitted.

Section 21. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, a[any] person entitled to appear as a party, or a[any] person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

Section 22. Response to Motions. A[Any] party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 23. Failure to File. Failure to file any pleading pursuant to these rules when due[,] may, in the discretion of the commission or the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 24. Withdrawal of Notice of Contest. At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the commission.

Section 25. Prehearing Conference. (1) At any time before a hearing, the commission or the hearing officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The commission or the hearing officer may issue a prehearing order which includes the agreements reached by the parties. The[Such] order shall be served on all parties and shall be a part of the record.

Section 26. Requests for Admissions. (1) At any time after the filing of responsive pleadings, a[any] party may request of any other party admissions of facts to be made under oath. Each admission requested shall be stated[set forth] separately. The matter shall be deemed admitted unless, within fifteen (15) days after service of the request[,] or within a[such] shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission[ef] a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with Section 9 of this administrative regulation[the provisions of these rules] and filed with the commission within the time allotted and shall be a part of the record.

Section 27. Discovery Depositions and Interrogatories. (1)

Except by special order of the commission or the hearing officer, discovery depositions of parties, intervenors, or witnesses and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) If[in the event] the commission or the hearing officer grants an application for the conduct of such discovery proceedings, the order [granting the same] shall set forth appropriate time limits governing the discovery.

Section 28. Failure to Comply With Orders for Discovery. If a[any] party or intervenor fails to comply with an order of the commission or the hearing officer to permit discovery that complies[in accordance] with Section 27 of this administrative regulation[the provisions of these rules], the commission or the hearing officer may issue appropriate orders.

Section 29. Issuance of Subpoenas; Petitions to Revoke or Modify Subpoenas; Right to Inspect or Copy Data. (1) A[Any] member of the commission shall, on the application of a[any] party directed to the commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents in the witness's[his] possession or under the witness's[his] control. Applications for subpoenas, if filed subsequent to the assignment of the case to a hearing officer, may be filed with the hearing officer. A hearing officer shall grant the application on behalf of any member of the commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(2) A[Any] person served with a subpoena, whether ad testificandum or duces tecum, shall[,] within five (5) days after the date of service of the subpoena upon him[,] move in writing to revoke or modify the subpoena if he does not intend to comply. All Motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The hearing officer or the commission, as the case may be, shall revoke or modify the subpoena if, in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The hearing officer or the commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify[,] any answer filed in response[thereto] and the ruling on the motion[thereon] shall become a part of the record.

(3) Persons compelled to submit data or evidence at a public proceeding may[are entitled to] retain or, on payments of lawfully prescribed costs, [to] procure copies of transcripts of the data or evidence submitted by them.

(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the party seeking to enforce the challenged subpoena[commission by its counsel] shall initiate proceedings in the Franklin Circuit Court or appropriate circuit court to enforce the subpoena[for the enforcement thereof][,] if, in its judgment, [the] enforcement [of the][such][subpoena] would be consistent with law and with policies of the Act. [Neither the commission nor its counsel is responsible] shall be deemed thereby to have assumed responsibility[for the effective prosecution of the same before the court]

Section 30. Notice of Hearing. (1) Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days in advance of the[such] hearing, except as otherwise provided in Section 52 of this administrative regulation.

(2) Copy of notice of hearing shall be served by the employer on affected employees or[and/or] the affected employees' representative as provided in Section 9 (9) and (10) of this administrative regulation, if no information has been received by



the employer as to employee intervention in the case before the commission. Notice of hearing shall/will be given by the commission to any party or/ intervenor.

(3) The hearing officer~~[executive director]~~ shall secure or cause to be secured a location for the[such] hearing~~[in the discretion of the commission]~~, and secure a reporter for the taking of proof at any hearing.

Section 31. Postponement of Hearing. (1) Postponement of a hearing ordinarily shall/will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, a[no]~~[such]~~ request shall not/will be considered unless received in writing at least three (3) days in advance of the time set for the hearing.

(3) Postponement of hearing not in excess of thirty (30) days may be granted in the discretion of the hearing officer. One (1) additional postponement not in excess of thirty (30) days may be granted by the hearing officer in extreme emergency or under unusual circumstances. An[No] additional postponement shall not/may be granted without commission approval.

Section 32. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be~~deemed to be~~ a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 48 of this administrative regulation.

(2) Requests for reinstatement shall/must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled hearing date.

(3) The commission or the hearing officer~~[,]~~ upon a showing of good cause~~[,]~~ may excuse the[such] failure to appear. If excused/in the[such][event], the hearing shall/will be rescheduled.

Section 33. Payment of Witness Fees and Mileage; Fees of Persons Taking Depositions. ~~[Witnesses summoned before the commission or the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of the Commonwealth of Kentucky and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the Commonwealth of Kentucky.]~~ Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

Section 34. Reporter's Fees. Reporter's fees shall be borne by the commission, except as provided in Section 33 of this administrative regulation.

Section 35. Transcript of Testimony. Hearings shall be transcribed verbatim. A copy of transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties and intervenors of the[such] filing. Participants desiring copies of the[such] transcripts may obtain them/the same from the official reporter after paying the transcript fees~~[upon payment of fees fixed therefor].~~

Section 36. Duties and Powers of Hearing Officers. ~~[It shall be the duty of]~~ The hearing officer shall/to conduct a fair and impartial hearing to assure that the facts are fully elicited and/ to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to this administrative regulation~~[the rules and administrative regulations of the commission]~~, to:

- (1) Administer oaths and affirmations;
- (2) Issue authorized subpoenas;
- (3) Rule upon petitions to revoke subpoenas;

(4) Rule upon offers of proof and receive relevant evidence;

(5) Take or cause depositions to be taken if/whenever the needs of justice would be served;

(6) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

(7) Hold conferences for the settlement or simplification of the issues;

(8) Dispose of procedural requests or similar matters including motions referred to the hearing officer by the commission and motions to amend pleadings;~~[also]~~ to dismiss complaints or portions of them/thereof~~[,]~~ and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;

(9) Call and examine witnesses and to introduce into the record documentary or other evidence;

(10) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of their positions/thereof;

(11) Adjourn the hearing as the needs of justice and good administration require; and

(12) Take any other action necessary~~[under the foregoing]~~ and authorized by this administrative regulation~~[the published rules and administrative regulations of the commission]~~.

Section 37. Disqualification of Hearing Officer. (1) A hearing officer may withdraw from a proceeding whenever disqualification is warranted~~[he deems himself disqualified]~~.

(2) A[Any] party may request the hearing officer at any time, following his designation and before the filing of his decision, to withdraw on grounds of personal bias or disqualification by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule upon the record, stating the grounds for his ruling, and shall proceed with the hearing~~[,]~~ or, if the hearing has closed, he shall proceed with the issuance of his decision in accordance with~~[and the provisions of]~~ Section 47 of this administrative regulation~~[shall thereupon apply]~~.

Section 38. Examination of Witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

Section 39. Affidavits. An affidavit may be admitted as evidence in lieu of oral testimony if the matters~~[therein]~~ contained in the affidavit are otherwise admissible and the parties agree to its admission.

Section 40. Deposition in Lieu of Oral Testimony; Application; Procedures; Form; Rulings. (1) (a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall state/set forth the reasons a[such] deposition should be taken. The application shall contain:

- 1.[,] The name and address of the witness;
- 2.[,] The matters the witness is expected to testify about~~[concerning which it is expected he will testify,]~~ [and]
3. The time and place proposed for the taking of the deposition; and
- 4.[,] [together with] The name and address of the officer/person before whom it is desired that the deposition be taken. The officer shall meet the requirements of subsection (2) of this section~~[for purposes of this section,]~~ [hereinafter referred to as the officer].

(b) The[Such] application shall be filed with the commission or the hearing officer, as the case may be, and shall be served on all

other parties and intervenors not less than seven (7) days (when the deposition is to be taken elsewhere) prior to the time when it is desired that the deposition be taken.

(c) ~~If [Where]~~ good cause has been shown, the commission or the hearing officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. ~~The [Such]~~ officer may or may not be the officer specified in the application.

(2) ~~The [Such]~~ deposition may be taken before an [any] officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held. If the examination is held in a foreign country, it may be taken before a [any] secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States.

(3) At the time and place specified in the order, the officer designated to take ~~the [such]~~ deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be ~~be [deemed]~~ waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him; that the deposition is a true record of the testimony and exhibits given by the witness; and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, ~~er~~ refuses to sign it, or will be unavailable to sign the typed deposition and it is so stated by agreement, ~~the [such]~~ fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original ~~and three (3) copies~~ of the transcript, together with his certificate, in person or by ~~certified [registered]~~ mail to the Executive Director, Kentucky Occupational Safety and Health Review Commission, #4 Millcreek Park, ~~Route #3, Millville Road,~~ Frankfort, Kentucky 40601.

(4) The hearing officer shall rule upon the admissibility of the deposition or any part of it [thereof].

(5) ~~All~~ Errors or irregularities in compliance with the provisions of this section shall be ~~be [deemed]~~ waived unless a motion to suppress the deposition or some part of it [thereof] is made with reasonable promptness after ~~the [such]~~ defect is, or with due diligence might have been, discovered.

(6) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

Section 41. Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(2) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the hearing officer pursuant to Section 42 of this administrative regulation.

(3) Unless the hearing officer finds it impractical, a copy of each ~~[such]~~ exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered but denied admission into evidence shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

Section 42. Rules of Evidence. Hearings before the commission and its hearing officers insofar as practicable shall be governed by the Kentucky Rules of Evidence ~~[applicable in the courts of the Commonwealth of Kentucky]~~.

Section 43. Burden of Proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a request for extension or modification of the abatement period, the burden of establishing the necessity for ~~the [such]~~ extension or modification shall rest with the petitioner.

(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the commissioner of the Department of Workplace Standards shall rest on the petitioner-complainant.

Section 44. Objections. (1) An [Any] objection with respect to the conduct of the hearing, including an [any] objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An [No] ~~[such]~~ objection shall not be ~~be [deemed]~~ waived by further participation in the hearing.

(2) ~~If [Whenever]~~ evidence is excluded from the record, the party offering ~~the [such]~~ evidence may make an offer of proof, which shall be included in the record of the proceeding.

Section 45. Interlocutory Appeals; Special; as of Right. (1) ~~[Unless expressly authorized by these rules,]~~ Rulings by the hearing officer shall [may] not be appealed directly to the commission except by its special permission. ~~[Unless otherwise provided by these rules, all]~~ ~~[such]~~ ~~[rulings shall become a part of the record.]~~

(2) Request to the commission for special permission to appeal from ~~a [such]~~ ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right ~~if [where]~~ the hearing officer certifies that:

(a) The ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. An [Such] appeal shall also be allowed in the circumstances set forth in Section 12 of this administrative regulation.

(4) Neither the filing of a petition for interlocutory appeal nor the granting thereof as provided in subsections (2) and (3) of this section shall stay the proceedings before the hearing officer unless a [such] stay is specifically ordered by the commission.

Section 46. Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for ~~the [such]~~ filing, but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or the date the hearing officer designates by order of his receipt. The complainant shall have fifteen (15) days to file, the respondent ten (10) days and the complainant five (5) days for reply, unless a shorter period is agreed on by all parties. Intervenors shall have until the 25th day of the thirty (30) day period in which to file briefs.

(2) A brief [All briefs] shall [must] be filed within the time fixed and the hearing officer or the commission may refuse to consider any brief filed after the deadline [thereafter]. Application for extension of time to file briefs shall [must] be made to the hearing officer or commission before whom the hearing was held.

(3) Briefs shall [must] be accompanied with notice ~~[,]~~ showing service upon all other parties; ~~[and]~~ in addition to the original filed, three (3) copies of each ~~[such]~~ document shall be furnished to the commission.

Section 47. Decisions of Hearing Officers. (1) The decision of the hearing officer shall include findings of fact, conclusions of law,

and a recommended order disposing of all issues before the hearing officer[him].

(2) The hearing officer shall sign the decision and forward to the executive director. The executive director shall then date and issue the[such] decision, sending a copy to all parties of record and to each commission member. Upon issuance of the recommended order, jurisdiction shall rest solely in the commission, and all motions, petitions, and other pleadings filed subsequent to its[such] issuance shall be addressed to the commission.

(3) The recommended order of the hearing officer may be called for further review by any commission member or by the commission as a whole at any time within a forty (40) day period. If the recommended order is not ordered for further review, it shall become the final order of the[this] commission forty (40) days after date of issuance. If a recommended order is called for review by a commissioner or the commission on its own order, parties shall[will] be advised in order that briefs may be submitted if desired. The commission shall[will] set the briefing time.

Section 48. Discretionary Review; Petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition shall[must] be received by the commission at its offices in Frankfort, Kentucky on or before the 25th day following receipt by the commission of the hearing officer's decision.

(3) A petition shall[should] contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the commission.

(4) Statements in opposition to petitions for discretionary review may be filed at any time during the review period, if received by the commission on or before the 35th day from date of the issuance of the recommended order. The[Such] statement shall contain a concise statement on each portion of the petition for discretionary review to which it is addressed.

(5) The commission while reviewing a case may request briefs on any point, and shall set the time for filing[such filings].

(6) The original and three (3) copies of all briefs or statements provided for under this section and Section 47 of this administrative regulation shall be furnished for use of the commission.

(7) Failure to act on any petition for discretionary review in the review period shall be deemed a denial of the petition[thereof].

Section 49. Stay of Final Order. (1) A[Any] party aggrieved by a final order of the commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) The[Such] motion shall state[set forth] the reasons a stay is sought and the length of the stay requested.

(3) The commission may order a[such] stay for the period requested or for a[such] longer or shorter period as it finds[deems] appropriate.

Section 50. Oral Argument Before the Commission. (1) Oral argument before the commission ordinarily shall[will] not be allowed.

(2) If[In the event] the commission desires to hear oral argument with respect to any matter, it shall[will] advise all parties to the proceeding of the date, hour, place, time allotted, and scope of the[such] argument at least ten (10) days prior to the date set.

Section 51. Settlement or Dismissals. (1) Settlement is encouraged at any stage of the proceedings if[where] a[such] settlement is consistent with the provisions and objectives of the Act.

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. The[Such] settlement agreement shall detail the basis for such settlement, either by order or a stipulated agreement properly signed by all parties.

(3) If[Where] parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected

employees in the manner set forth in Section 9 of this administrative regulation. Proof of such service shall accompany the proposed settlement when submitted to the commission or the hearing officer showing the[such] notice to such employees or authorized employee representative ten (10) days before submission to the hearing officer or the commission.

(4) In an[any] action on a citation on motion of either party for dismissal, the motion shall state the reason for such dismissal and show posting for ten (10) days as required for settlement agreements by subsection (3) of this section. If, in cases where dismissal is moved by the respondent, respondent shall also show abatement of cited violation and payment of any penalty, if applicable.

Section 52. Expedited Proceeding. (1) Upon application of a[any] party or intervenor, or upon a commissioner's[his] own motion, a[any] commission member may order an expedited proceeding.

(2) If[When] an expedited such proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times required by this administrative regulation[set forth in these rules], shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

Section 53. Standards of Conduct. [All] Persons appearing in a[any] proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

Section 54. Ex Parte Communication. (1) There shall not be [no] ex parte communication, with respect to the merits of any case not concluded, between the commission, including a[any] member, officer, employee, or agent of the commission who is employed in the decisional process, and a party or intervenor[any of the parties or intervenors].

(2) If[In the event] an such ex parte communication occurs, the commission or the hearing officer may make such orders or take such action as fairness requires. Upon notice and hearing, the commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

Section 55. Restrictions as to Participation by Investigative or Prosecuting Officers. In a[any] proceeding noticed pursuant to this administrative regulation[the rules in this part], the commissioner shall not participate or advise with respect to the report of the hearing officer or the commission decision.

Section 56. Inspection and Reproduction of Documents. (1) Subject to the provisions of law restricting public disclosure of information, a[any] person may, at the offices of the commission, inspect and copy any document filed in a[any] proceeding.

(2) Costs shall be borne by the requesting[such] person.

Section 57. Restrictions with Respect to Former Employees. (1) A[No] former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney [or other representative] for a[any] party in a[any] proceeding or other matter, formal or informal, in which the former employee[he] participated personally and substantially during the period of his employment.

(2) A[No] former employee of the commission or the commissioner (including a member of the commission or the executive director) shall not appear before the commission as an attorney [or other representative] for a[any] party in a[any] proceeding or other matter, formal or informal, for which the former employee[he] was personally responsible during the period of his employment, unless one (1) year has elapsed since

the termination of ~~the/his/~~[such] employment.

Section 58. Amendments to Rules. The commission may at any time upon its own motion or initiative, or upon written suggestion of ~~an/any/~~ interested person ~~stating/setting forth/~~ reasonable grounds ~~in support/therefor/~~, amend or revoke any of the rules contained ~~in this administrative regulation/herein/~~, in compliance with KRS Chapter 13A[43].

Section 59. Special Circumstances, Waiver of Rules. In special circumstances not contemplated by ~~this administrative regulation/the provisions of these rules/~~, or for good cause shown, the commission may, upon application by ~~a/any/~~ party or intervenor, or on its own motion, after three (3) days notice to all parties and intervenors, waive any rule or ~~issue/make such/~~ orders as justice or the administration of the Act requires.

Section 60. Penalties. All penalties assessed by the commission are civil.

LEE E. JACOBS, Executive Director

APPROVED BY AGENCY: December 13, 2013

FILED WITH LRC: December 13, 2013 at 10 a.m.

CONTACT PERSON: Eddie Jacobs, Executive Director, Kentucky Occupational Safety and Health Review Commission, # 4 Mill Creek Park, Frankfort, Kentucky 40601, phone (502) 573-6892, fax (502) 573-4619.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(As Amended at ARRS, May 13, 2014)**

**804 KAR 9:050. Quota retail drink licenses.**

RELATES TO: KRS 241.060, 241.065, 241.075, 242.125 [242.152], 242.127, 242.129, 243.030, 243.230

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(2) authorizes the board to limit the number of licenses of each kind or class to ~~be issued/issue/~~ in this state or any political subdivision, and restrict the locations of licensed premises. This administrative regulation establishes quota retail drink licenses in cities that have become wet pursuant to KRS 242.125 separately from their respective counties that remain dry.

Section 1. Establishment of General City Quotas. (1) Except as provided in subsection (2) of this section and Section 4 of this administrative regulation, the number of quota retail drink licenses issued by the department in ~~a/any/~~ city of the Commonwealth which becomes wet separately by virtue of a KRS 242.125 local option election held after January 1, 2013, shall be one (1) for every 2,500 persons resident in the city.

(2) The minimum number of quota retail drink licenses issued by the department in ~~a/any/~~ city shall be two (2) licenses.

(3) A wet fourth class city shall not receive any quotas under this section unless a majority of the votes cast in an election held under KRS 242.127 and KRS 242.129 are in favor of the sale of distilled spirits and wine by the drink for consumption on the premises.

(4) The estimates of population for Kentucky cities prepared by the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, shall be used~~/, if available,/~~ in every year except a census year to determine the number of licenses prescribed by this administrative regulation. The United States Government census figures of population shall be used in a census year.

Section 2. Requests for Specific City Quota. (1) Three (3) ~~or more~~ years after the certification of a wet election pursuant to KRS 242.125 by a first, second, or third class city, or pursuant to KRS 242.127 and 242.129 for a fourth class city, the city may file a request to the board seeking a specific city quota to increase the

number of quota retail drink licenses for the city~~/from that established in Section 1 of this administrative regulation/~~.

(2) Before seeking this request, the city shall publish a notice in the newspaper used by the city for legal notices advising the general public of the city's intent to request additional city quota licenses from the board.~~[A city may petition the board for a specific quota increasing the number of quota retail drink licenses only once every three (3) years from the date of the denial or establishment of a specific city quota.]~~

(3) A city's request to the board for a specific increased quota shall include:

(a) A certified copy of a city's governing body government resolution approving the request;

(b) A certified copy of the notice referenced in subsection (2) of this section; and

(c) An explanation why the city meets the criteria for a quota increase in conformity with Section 3 of this administrative regulation.

(4) Upon receiving a city request satisfying subsection (3) of this section, the board may promulgate, in conformity with KRS Chapter 13A, an amendment to Section 4 of this administrative regulation which sets a higher specific quota for the city.

(5) ~~The specific city quota for quota retail drink licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.~~

~~(6) This section shall not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the requested increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.~~

~~(7) If the board rejects a request made under this section, the board shall notify the city of its decision by registered mail at the address given in the request. Within thirty (30) days after the date of the mailing of the notice, the city may indicate, in writing, its desire for an administrative hearing before the board regarding its request. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.~~

~~(8) Following an initial request for an increase under subsection (1) of this section, a city may file an additional request to the board once every three (3) years from the date of the denial or establishment of a specific city quota. The procedures established in subsections (1) through (7) of this section shall be followed. [(6) In conformity with Section 4 of this administrative regulation, the department may publish notice of quota vacancies and issue quota retail drink licenses for the general quota number established by Section 1 of this administrative regulation. A licensee that holds a quota retail drink license assumes the business risk that the number of quota licenses might be increased.]~~

~~(7) Any specific city quota for quota retail drink licenses set by the board in subsection (4) of this section shall not exceed a ratio of one (1) for every 1,500 persons resident in the city.~~

~~(8) This section shall not guarantee that a city will receive the requested specific city quota even if the board promulgates an initial amendment pursuant to subsection (4) of this section. The city shall bear the burden of showing the increase is necessary due to a change in circumstances from the previous request and that current needs are not being met by the current license holders.]~~

Section 3. Criteria for Consideration. (1) The board ~~shall/may/~~ consider the following information in its determination of a city's request for an increased quota made under Section 2(3) of this administrative regulation:

~~(a)/(1)/~~ Population served by the city;

~~(b)/(2)/~~ Total retail sales of the city for the most recent past fiscal year;

~~(c)/(3)/~~ Retail sales per capita for the most recent past fiscal year;

(d)(4) Total alcohol sales in the city for the most recent fiscal year;

(e)(5) Tourist destinations in the area, *if applicable*; and  
(f)(6) Other economic and commercial data offered to show the city's capacity to support additional licenses.

**(2) The board shall grant the request if the factors considered under subsection (1) of this section justify the requested increase.**

Section 4. Establishment of Specific City Quotas. (1) Danville, which repealed prohibition on March 2, 2010, shall have six (6) quota retail drink licenses.

(2)[Section 2.] Radcliff, which repealed prohibition on October 4, 2011, shall have eight (8) quota retail drink licenses.

(3)[Section 3.] Somerset, which repealed prohibition on June 26, 2012, shall have five (5) quota retail drink licenses.

(4)[Section 4.] Murray, which repealed prohibition on July 17, 2012, shall have seven (7) quota retail drink licenses.

**Section 5. Quota Vacancies. (1) On or before January 1 of each year, the Department of Alcoholic Beverage Control shall request from the Kentucky State Data Center, Urban Studies Center of the University of Louisville, Louisville, Kentucky, population estimates as of that date for all wet cities located in dry counties.**

**(2) If a city's population has increased and the city no longer has one (1) quota retail drink license for every 2,500 persons resident in the city, the Department of Alcoholic Beverage Control shall increase the city's quota to maintain the 1:2,500 ratio.**

**(3) If a quota retail drink license vacancy is created under Section 1, 2, or 5(2) of this administrative regulation or it occurs for any other reason, the Department of Alcoholic Beverage Control shall within sixty (60) days arrange for the newspaper used for city legal notices to advertise the vacancy and provide information about applying for it.**

**(4) The Department of Alcoholic Beverage Control shall accept applications for a quota retail drink license vacancy not later than thirty (30) days following the date on which the public notice required by subsection (3) of this section is published.**

**(5) A licensee that holds a quota retail drink license shall assume the business risk that the number of quota licenses might be increased.**

**Section 6. Quota Reductions. (1) This administrative regulation shall not prohibit renewal or approved transfer of an existing quota retail drink license issued in a wet city situated in a dry county.**

**(2) Except for cities with specific quotas under Section 2 of this administrative regulation, if a city has in existence more than one (1) quota retail drink license for every 2,500 persons resident in the city, the number of licenses shall be reduced as they expire or are surrendered or revoked.**

**Section 7. No Separate City Quota in Wet County. If a dry county in which a wet city is located becomes wet, the quota established for that entire county by 804 KAR 9:010 shall supersede and replace any separate city quota under this administrative regulation.**

FREDERICK HIGDON, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 13, 2014

FILED WITH LRC: March 13, 2014 at 4 p.m.

CONTACT PERSON: Trey Hieneman, Special Assistant,  
 Department of Alcoholic Beverage Control, 1003 Twilight Trail,  
 Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

**CABINET FOR HEALTH AND FAMILY SERVICES  
 Department for Medicaid Services  
 Commissioner's Office  
 (As Amended at ARRS, May 13, 2014)**

**907 KAR 1:019. Outpatient Pharmacy Program.**

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631-205.5639, 205.564, 205.6316, 205.8451, 205.8453, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13)[, 2010 Extra. Sess. Ky. Acts ch. 1, Part I.G.3.b.(26)]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Covered outpatient drug" is defined by 42 U.S.C. 1396r-8(k)(2).

(5) "Department" means the Department for Medicaid Services or its designated agent.

(6) "Department's pharmacy Internet Web site" or "Web site" means the Internet Web site maintained by the Department for Medicaid Services and accessible at <http://www.chfs.ky.gov/dms/Pharmacy.htm>.

(7) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, **and includes[including]** a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(8) "Drug list" means the Department for Medicaid Services' list which:

(a) Specifies:

1. Drugs, drug categories, and related items not covered by the department; and

2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs, drug categories, or related items and dispensing and prescribing information.

(9) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(10) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(11) "Emergency supply" means a seventy-two (72) hour supply.

(12) "Enrollee" means a recipient who is enrolled with a

managed care organization.

(13) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(14)[(13)] "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(15)[(14)] "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(16)[(15)] "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(17) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(18)[(16)] "Manufacturer" is defined in 42 U.S.C. 1396r-8(k)(5).

(19)[(17)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(20)[(18)] "Official compendia" or "compendia" is defined in 42 U.S.C. 1396r-8(g)(1)(B)(i).

(21)[(19)] "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(22)[(20)] "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(23)[(21)] "Prescriber" means a health care professional who:

(a) Within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered;

(b) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672; and

(c) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671.

(24)[(22)] "Recipient" is defined by KRS 205.8451(9).

(25)[(23)] "Secretary" means the secretary of the Cabinet for Health and Family Services.

(26)[(24)] "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Centers for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List. (1) A covered outpatient drug, nonoutpatient drug, or diabetic supply covered via this administrative regulation shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) A covered outpatient drug covered via this administrative regulation shall be prescribed on a tamper-resistant pad unless exempt pursuant to subsection (3) of this section.

(3) The tamper-resistant pad requirement established in subsection (2) of this section shall not apply to:

(a) An electronic prescription;

(b) A faxed prescription; or

(c) A prescription telephoned by a prescriber.

(4) To qualify as a tamper-resistant pad prescription, a prescription shall contain:

(a) One (1) or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One (1) or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One (1) or more industry-recognized features designed to

prevent the use of counterfeit prescription forms.

(5)(a) Except as provided in paragraph (b) of this subsection, the department shall cover the diabetic supplies listed in this paragraph via the department's pharmacy program and not via the department's durable medical equipment program established in 907 KAR 1:479:

1. A syringe with needle (sterile, 1cc or less);

2. Urine test or reagent strips or tablets;

3. Blood ketone test or reagent strip;

4. Blood glucose test or reagent strips for a home blood glucose monitor;

5. Normal, low, or high calibrator solution, chips;

6. Spring-powered device for lancet;

7. Lancets per box of 100; or

8. Home blood glucose monitor.

(b) The department shall cover the following[diabetic supplies listed in this paragraph] via the department's durable medical equipment program established in 907 KAR 1:479[if]:

1. A[The] supply that has an HCPCS code of A4210, A4250, A4252, A4253, A4256, A4258, A4259, E0607 or E2100;

2. A[The] supply that has an HCPCS code of A4206 and for which a diagnosis of diabetes is present on the corresponding claim; or

3. A supply for which Medicare is the primary payer[payor for the supply].

(6) The department shall have a drug list which:

(a) Lists:

1. Drugs, drug categories, and related items not covered by the department and, if applicable, excluded medical uses for covered drugs; and

2. Maintenance drugs covered by the department;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;

(f) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(g) May be updated monthly or more frequently by the department; and

(h) Shall be posted on the department's Internet pharmacy Web site.

(7)[(6)](a) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization.

(b) The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from the requirement established in paragraph (a) of this subsection, based on documentation that drugs available without prior authorization:

1.[(a)] Were used and were not an effective medical treatment or lost their effectiveness;

2.[(b)] Are reasonably expected to not be an effective medical treatment;

3.[(c)] Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or

4.[(d)] Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:

1. A less-than-effective drug; or

2. Identical, related, or similar to a less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;
4. A drug if used for the symptomatic relief of cough and colds;
5. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

6. An over-the-counter drug provided to a Medicaid nursing facility service recipient if included in the nursing facility's standard price;

**7. [A barbiturate;**

**8. A benzodiazepine;**

**9.]** A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or

**8.[10.]** A drug utilized for erectile dysfunction therapy unless the drug is used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the United States Food and Drug Administration;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the drug and federal financial participation is available for the drug;

(d) A drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription for a:

(a) Controlled substance in Schedule ~~III or IV~~**[III-V]** may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or

(b) Noncontrolled substance, except as prohibited in subsection (4) of this section, may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug list as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply; or

(d) The prescription fill is for an outpatient service recipient, excluding an individual who is receiving supports for community living services in accordance with 907 KAR 1:145 **or 12:010**.

(4) A prescription fill for a maintenance drug for an outpatient service recipient who has demonstrated stability on the given maintenance drug, excluding an individual receiving supports for community living services in accordance with 907 KAR 1:145 **or 907 KAR 12:010**, shall be dispensed in a ninety-two (92) day supply unless:

(a) The department determines that it is in the best interest of the recipient to dispense a smaller supply; or

(b) The recipient is covered under the Medicare Part D benefit in which case the department shall not cover the prescription fill.

(5) The department may require prior authorization for a

compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of a recipient for the department to make payment for the compounded drug or compounded drug category.

(6) A prescriber shall make his or her national provider identifier (NPI) available to a pharmacist, and the prescriber's NPI shall be recorded on each pharmacy claim.

~~(7)(a) Except as provided in paragraph (b), (c), or (d) of this subsection, the department shall cover no more than a total of four (4) prescriptions, of which no more than three (3) shall be brand name prescriptions per recipient per month.~~

~~(b) The four (4) prescription limit shall not apply if the recipient:~~

~~1. Is under nineteen (19) years of age;~~

~~2. Uses insulin for the management of diabetes; or~~

~~3. Is a nursing facility resident who does not have Medicare Part D drug coverage.~~

~~(c) A pharmacist may utilize a four (4) prescription limit override code for a recipient whose prescription will exceed the four (4) prescription limit if the prescription is prescribed:~~

~~1. For any of the following conditions:~~

~~a. Acute infection or infestation;~~

~~b. Bipolar disorder;~~

~~c. Cancer;~~

~~d. Cardiac rhythm disorder;~~

~~e. Chronic pain;~~

~~f. Coronary artery or cerebrovascular disease (advanced atherosclerotic disease);~~

~~g. Cystic fibrosis;~~

~~h. Dementia;~~

~~i. Diabetes;~~

~~j. End stage lung disease;~~

~~k. End stage renal disease;~~

~~l. Epilepsy;~~

~~m. Hemophilia;~~

~~n. HIV or AIDS or immunocompromised;~~

~~o. Hyperlipidemia;~~

~~p. Hypertension;~~

~~q. Major depression;~~

~~r. Metabolic syndrome;~~

~~s. Organ transplant; or~~

~~t. Psychotic disorder; or~~

~~2. As part of:~~

~~a. Acute therapy for migraine headache or acute pain; or~~

~~b. Suppressive therapy for thyroid cancer.~~

~~(d) An additional prescription or prescriptions shall be covered if the department determines that it is in the best interest of the recipient to cover an additional prescription or prescriptions whether brand name or generic.~~

~~(8) The department shall cover up to three (3) brand name prescriptions per member per month unless the department determines that it is in the best interest of the member to cover any additional brand name prescriptions.~~

~~(9)] A refill of a prescription shall not be covered unless at least ninety (90) percent of the prescription **time period has elapsed**, except for a refill for a recipient who is a resident of a personal care home or a resident of a facility reimbursed pursuant to 907 KAR 1:025 or 1:065 **[, time period has elapsed]**.~~

(b) A refill of a prescription for a recipient who is a resident of a facility or entity referenced in paragraph (a) of this subsection shall not be covered unless at least eighty (80) percent of the prescription time **period** has lapsed.

Section 4. Prior Authorization Process. (1)(a) To request prior authorization for a drug:

1. The applicable form as required by this section shall be completed and submitted to the department:

a. By fax, mail, express delivery service, or messenger service; or

b. Via the department's pharmacy Internet Web site; or

2. A requester may provide the information required on the



applicable form to the department verbally via the telephone number published on the department's pharmacy Internet Web site.

(b) If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of a recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number or submitted to the department via the department's pharmacy Internet Web site.

(2) A Drug Prior Authorization Request Form shall be used by a:

(a) Prescriber or pharmacist to request prior authorization for a drug except for a brand name drug, buprenorphine product~~[Suboxone®, Subutex®]~~, Zyvox®, Synagis®, or an atypical antipsychotic agent;

(b) Pharmacist to request an early refill of a prescription; or

(c) Pharmacist to obtain prior authorization for special dispensing requests involving exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(3)(a) Except as established in paragraph (c) of this subsection, a Prior Authorization Request Form Brand Medically Necessary~~[Name Drug Request Form]~~ shall be used by a prescriber to request prior authorization for a brand name drug if a generic form of the drug is available.

(b) Regarding a Prior Authorization Request Form Brand Medically Necessary~~[Name Drug Request Form]~~, a prescriber shall:

1. Complete the form;

2. Include on the form:

a. The handwritten phrase "brand~~[band]~~ medically necessary" or "brand necessary"; and

b. The provider's signature for each specific drug requested; and

3. Indicate:

a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) Submission of a Prior Authorization Request Form Brand Medically Necessary~~[Name Drug Request Form]~~ shall not be required if:

1. The department has specifically exempted the drug, via the drug list, from this requirement;

2. It has been determined by the department to be in the best interest of a recipient not to require submission of a Prior Authorization Request Form Brand Medically Necessary~~[Name Drug Request Form]~~; or

3. The prescriber certifies that the brand name drug is medically necessary in accordance with paragraph (b) of this subsection~~[(3)(b) of this section]~~.

(d) In addition to the requirements established in paragraphs (a) through (c) of this subsection, the prescriber shall certify a brand name only request by including for each brand name drug requested, the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

1. The prescription;

2. The nursing facility order sheet; or

3. A separate sheet of paper that:

a. Includes the name of the recipient and the brand name drug requested; and

b. Is attached to the original prescription or nursing facility order sheet.

(4) A Prior~~[Mental Health Drug]~~ Authorization Request Form for Atypical Antipsychotic Agents Only Mental Health Drug shall be:

(a) Used to request prior authorization for an atypical antipsychotic drug; and

(b) Completed and submitted as directed on the form.

(5) A Suboxone® and Subutex® Prior Authorization Request Form Buprenorphine Products shall be:

(a) Used to request prior authorization for buprenorphine

products~~[Suboxone® or Subutex®]~~; and

(b) Completed and submitted as directed on the form.

(6) A Prior~~[Zyvox® (linezolid) Drug]~~ Authorization Request Form Zyvox® shall be:

(a) Used to request prior authorization for Zyvox®; and

(b) Completed and submitted as directed on the form.

(7) A Synagis® Prior Authorization Request Form Synagis® shall be:

(a) Used to request prior authorization for Synagis®; and

(b) Completed and submitted as directed on the form.

(8) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form [is one]~~[(1)]~~[which] has to be completed by the prescriber, submit a request for prior authorization in accordance with this section;

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a drug list alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list alternative; or

2. If the prescriber indicates that drug list alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form [is one]~~[(1)]~~[which] has to be completed by the prescriber, submit a prior authorization request in accordance with this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with this subsection.

1. The emergency situation shall~~:~~

~~a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and~~

~~b.]~~ exist if, based on the clinical judgment of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering.

2. At the time of the dispensing of the emergency supply, the pharmacist shall, in accordance with this section:

a. Submit a prior authorization request to the department's urgent fax number or to the department via the department's pharmacy Internet Web site; or

b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department.

3. An emergency supply shall not be provided for an over-the-counter (OTC) drug.

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) or (c) of this administrative regulation.

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

~~(9)[(a) If a prescriber submits a prescription to a pharmacy via telephone, the prescriber shall also fax the prescription for a controlled substance to the pharmacy within forty-eight (48) hours of submitting it via telephone.~~

~~(b) A pharmacy shall not be denied payment for services for the failure of the prescriber to fax the prescription for a controlled substance to the pharmacy if the pharmacy:~~

~~1. Requests a faxed prescription from the prescriber;~~



**2. Documents the request for a faxed prescription; and**  
**3. Documents that a faxed prescription, which was not received, was not received.**

(10) The department's notification of a decision on a request for prior authorization shall be made in accordance with this subsection [the following:]

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone, fax, or via the department's pharmacy Internet Web site to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request, [1-4.] the department shall provide a denial notice:

1. [a.] By mail to the recipient and in accordance with 907 KAR 1:563; and

2. [b.] By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(10)[(11)](a) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days.

(b) Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(11)[(12)] Prior authorization of drugs for a Medicaid long-term care recipient in a nursing facility shall be in accordance with this subsection.

(a) The department may specify in its drug list specific drugs or drug classes which shall:

1. Not be exempt[exempted] from prior authorization; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Prior Authorization Request Form Brand Medically Necessary [Name-Drug-Request-Form] in accordance with this section shall not be exempt[exempted] from prior authorization.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid Program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be subject to prior authorization in accordance with KRS 205.5632.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with this subsection and KRS 205.5632.

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug, which has been determined to require prior authorization, becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug, the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of a recipient for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications, and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the

drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of the drug after federal rebate and supplemental rebates have been subtracted from the cost.

(c)1. Within thirty (30) days of the date the committee's recommendation is posted on the department's pharmacy Internet Web site, the secretary, in consultation with the commissioner and the department's pharmacy staff, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization.

2. If the recommendation of the committee is not accepted, the secretary shall inform the committee of the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) The person gives notice to the department (and gives a copy to the DMRAB chairperson) by fax or email at least five (5) business days prior to the meeting.

(2) A verbal presentation:

(a) In aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required; or

(b) By an individual on a subject shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the DMRAB, if required.

(3) The proposed agenda shall be posted on the department's pharmacy Internet Web site at least fourteen (14) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T Committee meeting shall be conducted in accordance with KRS 205.564.

(3) A public presentation at a P&T Committee meeting shall comply with this subsection.

(a)1. A verbal presentation in aggregate per drug per drug manufacturer shall not exceed three (3) minutes with two (2) additional minutes allowed for questions from the P&T Committee, if required.

2. A verbal presentation by an individual on a subject shall not exceed five (5) minutes.

3. A request to make a verbal presentation shall be submitted in writing via fax or e-mail to the department with a copy to the chair of the P&T Committee no later than five (5) business days in advance of the P&T Committee meeting.

4. An individual may only present new information (package insert changes, new indication, or peer-reviewed journal articles) on a product or information on a new product.

5. A presentation shall be limited to an agenda item.

(b) Nonverbal comments, documents, or electronic media material (limited to package insert changes, new indication, or peer reviewed journal articles) shall be:

1.a. E-mailed to the department in a Microsoft compatible format (for example, Word, Power Point, Excel or other standard file formats including Adobe Acrobat's pdf format); or

b. Mailed to the department with a total of twenty-five (25)

copies mailed so that the department may distribute copies to P&T Committee members as well as to any other involved parties; and

2. Received by the department no later than seven (7) days prior to the P&T Committee meeting.

(4) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted as required by KRS 205.564(8).

(7)(a) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings.

(b) Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list.

(c) To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall:

1. Submit the request in writing to the department; and

2. ~~shall~~ Provide the following information about the drug manufacturer:

a. ~~(a)~~ Manufacturer's name;

b. ~~(b)~~ Mailing address;

c. ~~(c)~~ Telephone number;

d. ~~(d)~~ Fax number;

e. ~~(e)~~ E-mail address; and

f. ~~(f)~~ Name of a contact person.

Section 8. Review and Final Determination by the Secretary.

(1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and a dated public notice of the final determination shall be posted on the department's pharmacy Internet Web site for six (6) months. A copy of the final determination may be requested from the department after it is issued.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4)(a) 1. A final determination by the secretary may be appealed in accordance with KRS Chapter 13B.

2. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B.

(b) An appeal request shall:

1. ~~(a)~~ Be in writing;

2. ~~(b)~~ Be sent by mail, messenger, carrier service, or express-delivery service to the secretary in a manner that safeguards the information;

3. ~~(c)~~ State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

4. ~~(d)~~ Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's pharmacy Internet Web site; and

5. ~~(e)~~ Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health and Family Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Confirming Receipt of Prescription. (1) A recipient, or a designee of the recipient, shall sign his or her~~their~~ name in

a format which allows ~~the~~~~their~~ signature to be reproduced or preserved at a pharmacy confirming that the recipient received the prescription.

(2) A pharmacist shall maintain, or be able to produce a copy of, a log of recipient signatures referenced in subsection (1) of this section for at least six (6) years.

Section 10. Exemptions to Prescriber Requirements. The department shall reimburse for:

(1) A full prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for a full prescription is in the best interest of the recipient; or

(2) An emergency supply of a prescription prescribed by a provider who is not enrolled in the Kentucky Medicaid Program, if the department determines that reimbursing for the emergency supply is in the best interest of the recipient.

Section 11. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient receives a dispensing of a drug prescription from a pharmacist enrolled with the Medicaid Program, the department shall not reimburse for the same drug prescription dispensing provided to the same recipient during the same time period from another pharmacist.

Section 12. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 13. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 14. Auditing Authority. The department shall have the authority to audit any claim, ~~for~~ medical record, or documentation associated with any claim or medical record.

Section 15. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage;  
and

(2) Centers for Medicare and Medicaid Services' approval for the coverage[A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the provision; or
- (2) Disapproves the provision].

Section 16.[12.] Appeal Rights. (1) An appeal of an adverse action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be[A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug or decision regarding the amount of a drug dispensed based upon an application of this administrative regulation] in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

Section 17.[13.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Drug Prior Authorization Request Form", June 28, 2011;
- (b) "Prior Authorization Request Form Brand Medically Necessary", June 28, 2011;
- (c) "Prior Authorization Request Form for Atypical Antipsychotic Agents Only Mental Health Drug", November 14, 2011;
- (d) "Prior Authorization Request Form Buprenorphine Products", January 24, 2014;
- (e) "Prior Authorization Request Form Zyvox®", June 28, 2011; and
- (f) "Prior Authorization Request Form Synagis®", September 2012[May 15, 2007 edition;
- (b) "Brand Name Drug Request Form", May 15, 2007 edition;
- (c) "Mental Health Drug Authorization Request Form for Atypical Antipsychotic Agents", May 15, 2007 edition;
- (d) "Subaxone® and Subutex® Prior Authorization Request Form", September 22, 2009 edition;
- (e) "Zyvox® (linezolid) Drug Authorization Request Form", January 11, 2010 edition; and
- (f) "Synagis® Prior Authorization Request Form", November 2010 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 26, 2013

FILED WITH LRC: December 30, 2013 at 3 p.m.

CONTACT PERSON: Tricia Orme, tricia.orne@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:030. Home health agency services.**

RELATES TO: KRS 205.520, 42 C.F.R. 440.70, 447.325, 484.4, 45 C.F.R. 164.316, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, EO-2004-726]

NECESSITY, FUNCTION, AND CONFORMITY:[EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the

Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of Medical Assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the coverage provisions and requirements relating to Medicaid Program home health care services[for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy].

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Electronic signature" is defined by KRS 369.102(8).

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Home health agency" or "HHA" means:

- (a) An agency defined pursuant to 42 C.F.R. 440.70(d)[/]; and
- (b) A Medicare and Medicaid-certified agency licensed in accordance with 902 KAR 20:081.

(6)[(3)] "Home health aide" means a person who meets the home health aide requirements established in 902 KAR 20:081.

(7)[(4)] "Licensed practical nurse" or "LPN" means a person who is:

- (a) licensed in accordance with KRS 314.051[; and
- (b) Under the supervision of a registered nurse].

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(9)[(5)] "Medical social worker" means a person who meets the medical social worker requirements as established in 902 KAR 20:081.

(10)[(6)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(11)[(7)] "Nursing service" means the delivery of medication, or treatment by a registered nurse or a licensed practical nurse supervised by a registered nurse, consistent with KRS Chapter 314 scope of practice provisions and the Kentucky Board of Nursing scope of practice determination guidelines.

(12)[(8)] "Occupational therapist" is defined by KRS 319A.010(3)[means a person who meets the occupational therapist requirements established in 902 KAR 20:081].

(13) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(14)[(9)] "Physical therapist" is defined by KRS 327.010(2)[means a person who meets the physical therapist requirements established in 902 KAR 20:081].

(15) "Physical therapist[therapy] assistant" means a skilled health care worker who:

- (a) Is certified by the Kentucky Board of Physical Therapy; and
- (b) Performs physical therapy services and related duties as assigned by the supervising physical therapist.

(16)[(40)] "Place of residence" means, excluding a hospital or nursing facility, the location at which a recipient resides.

(17)[(41)] "Plan of care" means a written plan which shall:

- (a) Stipulate the type, nature, frequency and duration of a service; and
- (b) Be reviewed and signed by a physician and HHA staff person at least every sixty (60) days.

(18) "Provider" is defined by KRS 205.8451(7).

(19)[(42)] "Qualified medical social worker" means a person who meets the qualified medical social worker requirements as established in 902 KAR 20:081.

(20)[(43)] "Qualified social work assistant" means a social work assistant as defined in 42 C.F.R. 484.4.

(21) "Recipient" is defined by KRS 205.8451(9).

(22)[(44)] "Registered nurse" or "RN" is defined by KRS 314.011(5)[means a person licensed in accordance with KRS

314.041].

(23)(f15) "Speech-language pathologist" is defined by KRS 334A.020(3) [means a person who meets the speech pathologist requirements established in 902 KAR 20:084].

(24) "Speech-language pathology assistant" is defined by KRS 334A.020(8).

Section 2. Conditions of Participation. (1) In order to provide home health services, a provider shall:

(a) Be an HHA; and

(b) Comply with;

1. 907 KAR 1:671;

2. [;] 907 KAR 1:672;

3. [; and] 907 KAR 1:673;

4. All applicable state and federal laws; and

5. [(e) Comply with] The Home Health Services Manual.

(2)(a) A home health provider shall maintain a medical record for each recipient for whom services are provided.

(b) A [The] medical record shall:

1. Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service [(a) Substantiate the services billed to the department and be signed and dated by HHA staff];

2. [(b)] Contain a copy of the plan of care;

3. [(c)] Document verbal orders from the physician, if applicable;

4. Except as established in paragraph (d) of this subsection, be retained for a minimum of five (5) years from the date a covered service is provided or until any audit dispute or issue is resolved beyond five (5) years;

5. [; except in the case of a minor, whose records shall be retained for three (3) years after the recipient reaches the age of majority under state law, whichever is longest;

(e) Be kept in an organized central file within the HHA; and

6. [(f)] Be made available to the department upon request.

(c) The individual who provided a service shall date and sign the health record on the date that the individual provided the service.

(d) 1. If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (b)4. of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

2. In the case of a recipient who is a minor, the recipient's medical record shall be retained for three (3) years after the recipient reaches the age of majority under state law or the length established in paragraph (b)4 of this subsection or subparagraph 1 of this paragraph, whichever is longest.

(3) A provider shall comply with 45 C.F.R. Part 164.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 3. Covered Services. (1) A home health service shall be:

(a) [Effective November 15, 2001, be] Prior authorized by the department to ensure that the service or modification of the service is medically necessary and adequate for the needs of the recipient;

(b) [Be] Provided pursuant to a plan of care; and

(c) [Be] Provided in a recipient's place of residence.

(2) The following services provided to a recipient by a home health provider [;] who meets the requirements in Section 2 of this administrative regulation [;] shall be covered by the department:

(a) A nursing service which shall:

1. Include part-time or intermittent nursing services; and

2. If provided daily, be limited to thirty (30) days unless additional days are prior authorized by the department;

(b) A therapy service which shall:

1. Include physical therapy services provided by a physical therapist or a [qualified] physical therapist [therapy] [therapist] assistant [as defined in 42 C.F.R. 484.4] who is under the supervision of a [qualified] physical therapist;

2. Include occupational therapy services provided by an occupational therapist or an [a-qualified] occupational therapy assistant [as defined in 42 C.F.R. 484.4] who is under the supervision of an [a-qualified] occupational therapist;

3. Include speech-language pathology services [therapy] provided by [or under the supervision of] a speech-language pathologist or a speech-language pathology assistant who is under the supervision of a speech-language pathologist;

4. Be provided pursuant to a plan of treatment which shall be developed by the appropriate [qualified] therapist and physician; [and]

5. Be provided in accordance with 907 KAR 1:023; and

6. Comply with the:

a. Physical therapy service [; occupational therapy and speech therapy] requirements established in the:

(i) ["] Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is a physical therapy service provided to an adult [; February 2000 Edition"] or

(ii) ["] Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is a physical therapy service provided to a child [; April 2000 Edition"];

b. Occupational therapy requirements established in the:

(i) Technical Criteria for Reviewing Ancillary Services for Adults if the therapy service is an occupational therapy service provided to an adult; or

(ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the therapy service is an occupational therapy service provided to a child; or

c. Speech-language pathology service requirements established in the:

(i) Technical Criteria for Reviewing Ancillary Services for Adults if the service is a speech-language pathology service provided to an adult; or

(ii) Technical Criteria for Reviewing Ancillary Services for Pediatrics if the service is a speech-language pathology service provided to a child;

(c) A home health aide service which shall:

1. Include the performance of simple procedures as an extension of therapy services, personal care, range of motion exercises and ambulation, assistance with medications that are ordinarily self-administered, reporting a change in the recipient's condition and needs, incidental household services which are essential to the recipient's health care at home when provided in the course of a regular visit, and completing appropriate records;

2. Be provided by a home health aide who is supervised at least every fourteen (14) days [two (2) weeks] by:

a. An RN;

b. A physical therapist, for any physical therapy services that are provided by the home health aide;

c. An occupational therapist, for any occupational therapy services that are provided by the home health aide; or

d. A speech-language pathologist [therapist], for any speech-language pathology [therapy] services that are provided by the home health aide; and

3. Be a service that the recipient is either physically or mentally unable to perform;

(d) A medical social service which shall:

1. Be provided by a qualified medical social worker or qualified social work assistant; and

2. Be provided in conjunction with at least one (1) other service listed in this section;

(e) A [disposable medical] supply listed on the Home Health Schedule of Supplies, which shall be covered:

1. Include the following:

a. An adapter;

b. An applicator;

c. Drainage supplies;

d. Dressing supplies;

e. Catheter, ileostomy or ureostomy supplies;

- ~~f. Colostomy supplies;~~
- ~~g. A detection reagent for other than sugar or ketone;~~
- ~~h. Except for the limitations contained in Section 4(5) of this administrative regulation, diapers, underpads or incontinent pants;~~
- ~~i. An egg crate mattress;~~
- ~~j. An enema or elimination supplies including a fleet enema or dulcolax suppository;~~
- ~~k. Gastrostomy supplies;~~
- ~~l. Gloves;~~
- ~~m. Inhalation therapy supplies;~~
- ~~n. Irrigation solutions;~~
- ~~o. IV therapy supplies;~~
- ~~p. Lambs wool or a synthetic pad;~~
- ~~q. A lotion, powder or cream for an invalid or bedfast recipient;~~
- ~~r. A nipple if designed for cleft palate;~~
- ~~s. Inexpensive occupational therapy supplies which may include a plastic utensil holder or a long arm reacher;~~
- ~~t. Suction supplies;~~
- ~~u. Support supplies which may include antiembolism stockings, support vest, support gauntlet, or support glove;~~
- ~~v. A syringe or needle (excluding an insulin syringe for a diabetic);~~
- ~~w. Tracheostomy supplies; or~~
- ~~x. Tubing; and~~

~~2.] if provided to a recipient pursuant to the recipient's plan of care; or [who is not in need of a home health visit, be required to maintain him in his place of residence. A physician shall certify the medical necessity of a disposable medical supply by completing and signing a MAP-248 form; and]~~

~~(f) A supplemental [An enteral] nutritional product listed on the Home Health Schedule of Supplies, which shall:~~

~~1. Be ingested orally or delivered by tube into the gastrointestinal tract; [and]~~

~~2. Provide for the [total or] supplemental nutrition of a recipient; and~~

~~3. Require a completed MAP-248 signed by a physician certifying the medical necessity of the supplemental nutritional product.~~

Section 4. Limitations and Exclusions from Coverage. (1) A domestic or housekeeping service which is unrelated to the health care of a recipient shall not be covered.

(2) A medical social service shall not be covered unless provided in conjunction with another service pursuant to Section 3 of this administrative regulation.

(3) Supplies for personal hygiene shall not be covered. [;]

(4) Drugs shall not be covered.

(5) Disposable diapers shall not be covered for a recipient age three (3) years and under, regardless of the recipient's medical condition.

(6) Except for the first week following a home delivery, a newborn or postpartum service without the presence of a medical complication shall not be covered.

(7) A recipient who has elected to receive hospice care shall not be eligible to receive coverage under the home health program.

(8)(a) There shall be an annual limit of twenty (20):

1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection;

2. Physical therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection; and

3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (b) of this subsection.

(b) The limits established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled if the recipient is an enrollee.

(c) Prior authorization by the department shall be required for each visit that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for a speech-language pathology service provided to the same recipient during the same time period via the home health services program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 8. Auditing Authority. ~~[(1)]~~ The department shall have the authority to audit any claim, ~~or~~ medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights. (1) An appeal of an adverse [a negative] action taken by the department regarding a service and a recipient who is not enrolled with a managed care organization [Medicaid beneficiary] shall be in accordance with 907 KAR 1:563.J; ~~or~~ [;].

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010 [An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:674].

Section 11. [6.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-248, ~~Commonwealth of Kentucky, Cabinet for Health Services, Department for Medicaid Services~~", April

~~2009[December 2001]~~[revision];

(b) "Home Health Services Manual", ~~May 2014~~[~~November 1993~~][~~edition~~];

(c) "Technical Criteria for Reviewing Ancillary Services for Adults", February 2000[~~Edition~~]; ~~and~~

(d) "Technical Criteria for Reviewing Ancillary Services for Pediatrics", April 2000; ~~and~~

~~(e) "Home Health Schedule of Supplies", May 2014~~[~~Edition~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.; or

(b) The Web site located at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

# CABINET FOR HEALTH AND FAMILY SERVICES

## Department for Medicaid Services

### Division of Provider Operations

(As Amended at ARRS, May 13, 2014)

#### 907 KAR 1:038. Hearing Program coverage provisions and requirements[~~Hearing and Vision Program services~~].

RELATES TO: KRS 205.520, 334.010(4), (9), 334A.020(5), 334A.030, 42 C.F.R. 441.30, 447.53, 457.310, 42 U.S.C. 1396a, b, d, 1396r-6

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the Medicaid Program provisions and requirements regarding the coverage of audiology services and hearing instruments[hearing services and vision services for which payment shall be made by the Medicaid Program].

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2)[~~"Comprehensive choices"~~] means a benefit plan for an individual who:

(a) ~~Meets the nursing facility patient status criteria established in 907 KAR 1:022;~~

(b) ~~Receives services through either:~~

1. ~~A nursing facility in accordance with 907 KAR 1:022;~~

2. ~~The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;~~ 3. ~~The Home and Community-Based Waiver Program in accordance with 907 KAR 1:160; or~~

4. ~~The Model Waiver II Program in accordance with 907 KAR 1:595; and~~

(c) ~~Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.~~

(3)[~~3~~] "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(3)[~~4~~] "Department" means the Department for Medicaid Services or its designee.

(4) "Enrollee" means a recipient who is enrolled with a

managed care organization.

(5) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(6) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or ~~items~~[~~time~~].

(7)[~~(5)~~] "~~Emergency~~" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.

(6) "~~Family choices~~" means a benefit plan for an individual who:

(a) ~~Is covered pursuant to:~~

1. ~~42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;~~

2. ~~42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);~~

3. ~~42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);~~

4. ~~42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);~~

5. ~~42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or~~

6. ~~42 C.F.R. 457.310; and~~

(b) ~~Has a designated package code of 2, 3, 4, or 5.~~

(7) "~~Global choices~~" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) ~~Caretaker relatives who:~~

1. ~~Receive K-TAP benefits and are deprived due to death, incapacity, or absence;~~

2. ~~Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or~~

3. ~~Do not receive K-TAP benefits and are deprived due to unemployment;~~

(b) ~~Individuals aged sixty-five (65) and over who receive SSI benefits and:~~

1. ~~Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or~~

2. ~~Receive SSP benefits and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

(c) ~~Blind individuals who receive SSI benefits and:~~

1. ~~Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or~~

2. ~~SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

(d) ~~Disabled individuals who receive SSI benefits and:~~

1. ~~Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or~~

2. ~~SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

(e) ~~Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;~~

(f) ~~Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;~~

(g) ~~Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;~~

(h) ~~Pregnant women; or~~

(i) ~~Medicaid works individuals.~~

(8) "Hearing instrument" is defined by KRS 334.010(4).

(8) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Recipient" is defined by KRS 205.8451(9). "~~Nonemergency~~" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R.

447.53]

(11) ["Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with an intellectual disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with an intellectual disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(12) "Specialist in hearing instruments" is defined by KRS 334.010(9).

Section 2. General Requirements. (1)(a) For the department to reimburse for a service or item, the service or item shall:

1. Be provided:

a. To a recipient under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Except as provided by paragraph (b) of this subsection, currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with this administrative regulation;

2. Be covered in accordance with this administrative regulation;

3. Be medically necessary; and

4. Have a CPT code or HCPCS code that is listed on the Department for Medicaid Services Hearing Program Fee Schedule.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5)(a) An in-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license in accordance with KRS Chapter 334A;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1 of this paragraph to the department; and

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department.

(b) An out-of-state audiologist shall:

1. Maintain a current, unrevoked, and unsuspended license to practice audiology in the state in which the audiologist is licensed;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the audiologist by the American Speech-Language-Hearing Association ~~if the audiologist is out-of-state~~.

(c) If an audiologist fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the audiologist is in-state or out-of-state, the:

1. Audiologist shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the audiologist effective with the date the audiologist fails or failed to comply.

(6)(a) An in-state specialist in hearing instruments shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the Kentucky Licensing Board for Specialists in Hearing Instruments;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments by the American Speech-Language-Hearing Association.

(b) An out-of-state specialist in hearing instruments[instrument dispenser] shall:

1. Maintain a current, unrevoked, and unsuspended license issued by the licensing board with jurisdiction over specialists in hearing instruments[instrument dispenser] in the state in which the license is held;

2. Before initially enrolling in the Kentucky Medicaid Program, submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

3. Annually submit proof of the license referenced in subparagraph 1 of this paragraph to the department;

4. Maintain a Certificate of Clinical Competence issued to the specialist in hearing instruments[audiologist] by the American Speech-Language-Hearing Association; and

5. Before enrolling in the Kentucky Medicaid Program, submit proof of having a Certificate of Clinical Competence issued to the specialist in hearing instruments[audiologist] by the American Speech-Language-Hearing Association.

(c) If a specialist in hearing instruments fails to comply with paragraph (a) or (b) of this subsection, as applicable based on if the specialist in hearing instruments is in-state or out-of-state, the:

1. Specialist in hearing instruments shall be ineligible to be a Kentucky Medicaid Program provider; and

2. Department shall not reimburse for any service or item provided by the specialist in hearing instruments effective with the date the specialist in hearing instruments fails or failed to comply.

Section 3. Audiology Services. (1) Audiology service[Hearing Services. (1) All hearing] coverage shall be limited to/:

(a) A service provided:

1. To a recipient ~~Limited to an individual~~ under the age of twenty-one (21) years, including the month in which the individual becomes twenty-one (21); and

2. By an audiologist who:

a. Is enrolled in the Medicaid Program pursuant to 907

**KAR 1:672:**

**b. Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and**

**c.(i) Meets the in-state audiologist requirements established in Section 2(5)(a) of this administrative regulation if the audiologist is an in-state audiologist; or**

**(ii) Meets the out-of-state audiologist requirements established in Section 2(5)(b) of this administrative regulation if the audiologist is an out-of-state audiologist;**

**(b) A medically necessary service;**

**(c)] one (1) complete hearing evaluation per calendar year[; and**

**(d) A CPT code or HCPCS code listed on the Department for Medicaid Services Hearing Program Fee Schedule]; and**

**(b) Provided in accordance with the Hearing Program Manual].**

(2) Unless a recipient's health care provider demonstrates, and the department agrees, that an additional hearing instrument evaluation is medically necessary, a[services in excess of the limitations established in this subsection are medically necessary, reimbursement for services provided by an audiologist licensed pursuant to KRS 334A.030 to a recipient shall be limited to:

(a) The following procedures which shall be covered only if a recipient is referred by a physician to an audiologist licensed pursuant to KRS 334A.030:

Code	Procedure
92552	Pure Tone audiometry (threshold); air only
92555	Speech audiometry threshold
92556	Speech audiometry threshold; with speech recognition
92557	Comprehensive audiometry evaluation
92567	Tympanometry
92568	Acoustic reflex testing
92579	Visual reinforcement audiometry
92585	Auditory evoked potentials
92587	Evoked otoacoustic emissions
92588	Complete or diagnostic evaluation (comparison of transient or distortion product otoacoustic emissions at multiple levels and frequency)
92541	Spontaneous nystagmus test
92542	Positional nystagmus test
92543	Caloric vestibular test
92544	Optokinetic nystagmus test
92545	Oscillating tracking test
92546	Sinusoidal vertical axis rotational testing
92547	Use of vertical electrodes

(b) Complete hearing evaluation;

(e)] hearing instrument evaluation shall;

**(a) [Be limited to being provided to an individual under the age of twenty-one (21) years, including the month in which the individual becomes twenty-one (21);**

**(b)] Include three (3) follow-up visits, which shall be:**

**1. Within the six (6)[-] month period immediately following the fitting of a hearing instrument; and**

**2. Related to the proper fit and adjustment of the hearing instrument; and**

**(b)](e)] Include one (1) additional follow-up visit, which shall be[;**

(d) Three (3) follow-up visits that shall be:

**1. Within the six (6) month period immediately following fitting of a hearing instrument; and**

**2. Related to the proper fit and adjustment of the hearing instrument; and**

**(e) One (1) additional follow-up visit that is[;**

**1. At least six (6) months following the fitting of the hearing instrument; and**

**2. Related to the proper fit and adjustment of the hearing instrument.**

**(3)(a) A referral by a physician to an audiologist shall be required for an audiology service.**

**(b) The department shall not cover an audiology[audiologist]**

service if a[no] referral from a physician to the audiologist was **not** made.

Section 4. Hearing Instrument Coverage.[(3)] Hearing instrument benefit coverage shall:

**(1) [Be limited to a benefit;**

**(a) For an individual under the age of twenty-one (21) years, including the month in which the individual becomes twenty-one (21);**

**(b) Provided by a specialist in hearing instruments or audiologist who meets the:**

**1. In-state specialist in hearing instruments requirements established in Section 2(6) of this administrative regulation if the specialist in hearing instruments is an in-state specialist in hearing instruments; or**

**2. Out-of-state audiologist requirements established in Section 2(6) of this administrative regulation if the audiologist is an out-of-state audiologist;**

**(c) That is medically necessary; and**

**(d) That has a corresponding HCPCS code listed on the Department for Medicaid Services Hearing Program Fee Schedule;**

**(2)] If the benefit is a hearing instrument model,[ (a)] be for a hearing instrument model that is:**

**(a)[4.-] Recommended by an audiologist licensed pursuant to KRS 334A.030; and**

**(b)[2.-] Available through a Medicaid-participating specialist in hearing instruments; and**

**(2) Except as provided by Section 5(3) of this administrative regulation,[ (3)](b)] not exceed \$800 per ear every thirty-six (36) months[; and**

**(c) Be limited to the following procedures:**

Code	Procedure
V5010	Assessment for Hearing instrument
V5011	Fitting, Orientation, Checking of Hearing instrument
V5014	Repair, Modification of Hearing Instrument
V5015	Hearing Instrument Repair Professional Fee
V5020	Conformity Evaluation
V5030	Hearing Instrument, Monaural, Body Aid Conduction
V5040	Hearing Instrument, Monaural, Body Worn, Bone Conduction
V5050	Hearing Instrument, Monaural, In the Ear Hearing
V5060	Hearing Instrument, Monaural, Behind the Ear Hearing
V5070	Glasses; Air Conduction
V5080	Glasses; Bone Conduction
V5090	Dispensing Fee, Unspecified Hearing Instrument
V5095	Semi-Implantable Middle Ear Hearing Prosthesis
V5100	Hearing Instrument, Bilateral, Body Worn
V5120	Binaural; Body
V5130	Binaural; In the Ear
V5140	Binaural; Behind the Ear
V5150	Binaural; Glasses
V5160	Dispensing Fee, Binaural
V5170	Hearing Instrument, Cros, In the Ear
V5180	Hearing Instrument, Cros, Behind the Ear
V5190	Hearing Instrument, Cros, Glasses
V5200	Dispensing Fee, Cros
V5210	Hearing Instrument, Bicos, In the Ear
V5220	Hearing Instrument, Bicos, Behind the Ear
V5230	Hearing Instrument, Bicos, Glasses
V5240	Dispensing Fee, Bicos
V5241	Dispensing Fee, Monaural Hearing Instrument, Any Type
V5242	Hearing Instrument, Analog, Monaural, CIC (Completely In the Ear Canal)
V5243	Hearing Instrument, Analog, Monaural, ITC (In the Canal)



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V5244	Hearing Instrument, Digitally Programmable Analog, Monaural, CIC
V5245	Hearing Instrument, Digitally Programmable Analog, Monaural, ITC
V5246	Hearing Instrument, Digitally Programmable Analog, Monaural, ITE (In the Ear)
V5247	Hearing Instrument, Digitally Programmable Analog, Monaural, BTE (Behind the Ear)
V5248	Hearing Instrument, Analog, Binaural, CIC
V5249	Hearing Instrument, Analog, Binaural, ITC
V5250	Hearing Instrument, Digitally Programmable Analog, Binaural, CIC
V5251	Hearing Instrument, Digitally Programmable Analog, Binaural, ITC
V5252	Hearing Instrument, Digitally Programmable, Binaural, ITE
V5253	Hearing Instrument, Digitally Programmable, Binaural, BTE
V5254	Hearing Instrument, Digital, Monaural, CIC
V5255	Hearing Instrument, Digital, Monaural, ITC
V5256	Hearing Instrument, Digital, Monaural, ITE
V5257	Hearing Instrument, Digital, Binaural, BTE
V5258	Hearing Instrument, Digital, Binaural, CIC
V5259	Hearing Instrument, Digital, Binaural, ITC
V5260	Hearing Instrument, Digital, Binaural, ITE
V5261	Hearing Instrument, Digital, Binaural, BTE
V5262	Hearing Instrument, Disposable, Any Type, Monaural
V5263	Hearing Instrument, Disposable, Any Type, Binaural
V5264	Ear Mold (One (1) Ear Mold Per Year Per Ear and if Medically Necessary)]
V5266	Hearing Instrument Battery (Limit of Four (4) Per Instrument When Billed With A New Hearing Instrument Or A Replacement Instrument)
V5267	Hearing Instrument Supplies, Accessories
V5299	Hearing Service Miscellaneous (May Be Used to Bill Warranty Replacement Hearing Instruments But Shall be Covered Only if Prior Authorized by the Department)]

Section 5. Replacement of a Hearing Instrument. (1) The department shall reimburse for the replacement of a hearing instrument if:

- (a) A loss of the hearing instrument necessitates replacement;
- (b) Extensive damage has occurred necessitating replacement;

or

(c) A medical condition necessitates the replacement of the previously prescribed **hearing instrument[or equipment]** in order to accommodate a change in hearing loss.

(2) If replacement of a hearing instrument is necessary within twelve (12) months of the original fitting, the replacement hearing instrument shall be fitted upon the signed and dated recommendation from an audiologist.

(3) If replacement of a hearing instrument becomes necessary beyond twelve (12) months from the original fitting:

- (a) The recipient shall be examined by a physician with a referral to an audiologist; and
- (b) The recipient's hearing loss shall be re-evaluated by an audiologist.

Section 6. Noncovered services. The department shall not reimburse for:

(1) A routine screening of an individual or group of individuals for identification of a hearing problem;

(2) Hearing therapy except as covered through the six (6)[-] month adjustment counseling following the fitting of a hearing instrument;

(3) Lip reading instructions except as covered through the six (6)[-] month adjustment counseling following the fitting of a hearing instrument;

(4) A service for which the recipient has no obligation to pay

and for which no other person has a legal obligation to provide or to make payment;

(5) A telephone call;

(6) A service associated with investigational research; or

(7) A replacement of a hearing instrument for the purpose of incorporating a recent improvement or innovation unless the replacement results in appreciable improvement in the recipient's hearing ability as determined by an audiologist.

Section 7. Equipment. (1) Equipment used in the performance of a test shall meet the current standards and specifications established by the American National Standards Institute.

(2)(a) A provider shall ensure that any audiometer used by the provider or provider's staff shall:

1. Be checked at least once per year to ensure proper functioning; and

2. Function properly.

(b) A provider shall:

1. Maintain proof of calibration and any repair, if any repair occurs; and

2. Make the proof of calibration and repair, if any repair occurs, available for departmental review upon the department's request.

Section 8. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 9.[3. Vision Program Services. (1) Vision program coverage shall be limited to:

(a) A prescription service;

(b) A repair service made to a frame;

(c) A diagnostic service provided by:

1. An ophthalmologist; or

2. An optometrist to the extent the optometrist is licensed to perform the service.

(2) Eyeglass coverage shall:

(a) Be limited to a recipient who is under age twenty-one (21); and

(b) Not exceed:

1. \$200 per year for a recipient in the global choices benefit package; or

2. \$400 per year for a recipient in the comprehensive choices, family choices, or optimum choices benefit package.

(3) To be covered:

(a) A service designated as a physical medicine and rehabilitation service CPT code shall require prior authorization if provided to a recipient age twenty-one (21) or over;

(b) A radiology service specified in 907 KAR 3:005, Section 5, shall require prior authorization regardless of a recipient's age;

(c) A service shall be provided in accordance with the Vision Program Manual; and

(d) A lens shall be polycarbonate and scratch-coated.

Section 4.] Appeal Rights. [(1)] An appeal of a negative action regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563. [(2)] An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.]

Section 10.[5.] Incorporation by Reference. (1) The "Department for Medicaid Services Hearing Program Fee Schedule", December 2013,[following material] is incorporated by reference[:

(a) "The Vision Program Manual", October 2007 edition, Department for Medicaid Services; and

(b) "The Hearing Program Manual", October 2007 edition, Department for Medicaid Services].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: March 31, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:039. Hearing Program reimbursement provisions and requirements[Payments for hearing services].**

RELATES TO: KRS 205.520, 334.010, 334.040, 334.200, 334A.020(5), 42 C.F.R. 447.200, 204

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program[of Medical Assistance]. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the reimbursement provisions and requirements for covered audiology services, hearing instruments, and related items provided to a Medicaid recipient who is not enrolled with a managed care organization[method for determining amounts payable by the department for hearing services].

Section 1. Definitions. (1) "Audiologist" is defined by KRS 334A.020(5).

(2) "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology["Comparable instrument" means an instrument falling within the general classifications of fitting type, for example, body, behind-the-ear, in-the-ear, or eyeglasses].

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Federal financial participation" is defined by/in 42 C.F.R. 400.203.

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that represents procedures or time.

(6) "Hearing instrument" is defined by KRS 334.010(4).

(7) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Participating audiologist" means an audiologist who:

(a) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(b) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(c) Meets the audiologist requirements established in 907 KAR 1:038.

(10) "Participating specialist in hearing instruments" means a specialist in hearing instruments who:

(a) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(b) Is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(c) Meets the specialist in hearing instruments requirements established in 907 KAR 1:038.

(11) "Recipient" is defined by KRS 205.8451(9).

(12)[(5)] "Specialist in hearing instruments" is defined by KRS 334.010(9).

(13) "Usual and customary charge" means the uniform amount that a provider bills to the general public for a specific covered benefit.

Section 2. General Reimbursement Requirements. (1)(a) For the department to reimburse for a service or item, the requirements of 907 KAR 1:038, Section 2, shall be met.

(2)[service or item shall be:

1. Provided:

a. To a recipient under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21); and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) Currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized to provide the service in accordance with 907 KAR 1:038;

2. Covered in accordance with 907 KAR 1:038; and

3. Medically necessary.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the Medicaid Program if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program.

(2)(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(3) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(4)(a) If a provider receives any duplicate or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(5) The department shall not reimburse for:

(a) A service with a CPT code that is not listed on the Department for Medicaid Services Hearing Program Fee Schedule; or

(b) An item with an HCPCS code that is not listed on the Department for Medicaid Services Hearing Program Fee Schedule.

Section 3. Audiology Service Reimbursement. The department shall reimburse a participating audiologist for an audiology service at the lesser of the:

(1) Audiologist's usual and customary charge for the service; or

(2) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the service.

Section 4. Hearing Instrument Reimbursement. (1) The department shall reimburse a participating specialist in hearing instruments or participating audiologist for a hearing instrument at the lesser of the:

(a) Provider's usual and customary charge for the hearing instrument; or

(b) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the hearing instrument.

(2) A hearing examination of a recipient by a physician and a recommendation for a hearing instrument for the recipient by an audiologist shall:

(a) Be required for the department to cover a hearing instrument; and

(b) Occur prior to the fitting of a hearing instrument.

(3)(a) Except for an ear mold, an invoice for a hearing instrument, related supply, or accessory shall be submitted with the corresponding claim:

1. To the department; and

2. By the participating audiologist or participating specialist in hearing instruments who supplied the hearing instrument, related supply, or accessory.

(b) The department shall not require a participating audiologist or participating specialist in hearing instruments to submit an invoice for an ear mold.

Section 5. Ear Mold Reimbursement. (1) The department shall reimburse a participating audiologist or participating specialist in hearing instruments for an ear mold at the lesser of the:

(a) Provider's usual and customary charge for the ear mold; or

(b) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the ear mold.

(2) The department shall limit reimbursement for an ear mold, in conjunction with an ear examination, to:

(a) One (1) ear mold per six (6) month period for a child aged three (3) years or under; or

(b) One (1) ear mold per twelve (12) month period for a child who is at least four (4) years of age.

Section 6. Reimbursement for Hearing Instrument Batteries.

(1) The department shall reimburse a participating audiologist or participating specialist in hearing instruments for a hearing instrument battery at the lesser of the:

(a) Provider's usual and customary charge for the hearing instrument battery; or

(b) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the hearing instrument battery.

(2) The department's reimbursement for hearing instrument batteries shall be limited to fifty-two (52) batteries per hearing instrument when dispensed with a:

(a) New hearing instrument; or

(b) Replacement hearing instrument.

Section 7. Replacement Cord Reimbursement. The department shall reimburse a participating audiologist or participating specialist in hearing instruments for a replacement cord at the lesser of the:

(1) Provider's usual and customary charge for the replacement cord; or

(2) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the replacement cord.

Section 8. Hearing Instrument Repair Reimbursement. The department shall reimburse a participating audiologist or participating specialist in hearing instruments for hearing instrument repair at the lesser of the:

(1) Provider's usual and customary charge for the hearing

instrument repair; or

(2) Reimbursement established on the Department for Medicaid Services Hearing Program Fee Schedule for the hearing instrument repair.

Section 9. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or item covered pursuant to 907 KAR 1:038 and this administrative regulation.

Section 10. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 11. [Section 2. Reimbursement to an Audiologist. The department shall reimburse a participating audiologist at usual and customary actual billed charges up to the fixed upper limit per procedure established by the department at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

Section 3. Hearing Instrument Reimbursement. (1) If a manufacturer of a hearing instrument billed to the department submits a price schedule which includes the manufacturer's invoice price of the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The manufacturer's invoice price plus a professional fee of:

1. \$150 for the first (one (1) ear) hearing instrument; and

2. Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of:

1. \$150 for the first (one (1) ear) hearing instrument; and

2. Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date; or

(c) The suggested retail price submitted by the manufacturer for the hearing instrument.

(2) If a manufacturer of a hearing instrument billed to the department has not submitted a price schedule which includes the manufacturer's invoice price for the hearing instrument, the department shall reimburse the participating specialist in hearing instruments at the lesser of:

(a) The lowest price submitted for a comparable hearing instrument plus a professional fee of:

1. \$150 for the first (one (1) ear) hearing instrument; and

2. Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two

(2) hearing instruments are dispensed on the same date;

(b) The actual specialist in hearing instruments' cost plus a professional fee of:

1. \$150 for the first (one (1) ear) hearing instrument; and

2. Fifty (50) dollars for the second (two (2) ears or binaural) hearing instrument if two (2) hearing instruments are dispensed on the same date; or

(c) The lowest suggested retail price submitted by a manufacturer for a comparable instrument.

Section 4. Replacement Cord Reimbursement. The department shall reimburse for a replacement cord at the specialist in hearing instruments' cost plus a professional fee set at \$21.50.

Section 5. Hearing Instrument Repair Reimbursement. The department shall reimburse a specialist in hearing instruments for a hearing instrument repair:

(1) On the basis of the manufacturer's charge for repair or replacement of parts;

- (2) Plus the specialist in hearing instruments' cost for postage and insurance relative to the repair;
- (3) Plus a professional fee of \$21.50; and
- (4) Not to exceed the price of a new hearing instrument.

Section 6.] Appeals. A provider may appeal a department decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 12. Incorporation by Reference. (1) The "Department for Medicaid Services Hearing Program Fee Schedule", December 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

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# CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives

(As Amended at ARRS, May 13, 2014)

## 907 KAR 1:044. Coverage provisions and requirements regarding community mental health center services.

RELATES TO: KRS 194A.060, 205.520(3), 205.8451(9), 422.317, 434.840-434.860, 42 C.F.R. 415.208, 431.52, 431 Subpart F

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 210.450, 42 U.S.C. 1396a-d,

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the coverage provisions and requirements regarding[for] community mental health center (CMHC) services.

Section 1. Definitions. (1) "Community mental health center" or "CMHC" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Face-to-face" means occurring:

(a) In person; or

(b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(5) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(6) "Mental health associate" means an individual who meets the mental health associate requirements established in the Community Mental Health Center Services Manual.

(7) "Professional equivalent" means an individual who meets the professional equivalent requirements established in the Community Mental Health Center Services Manual.

(8)[(5)] "Provider" is defined by KRS 205.8451(7).

(9)[(7)] "Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.0011(12).

(10)[(8)][(6)] "Recipient" is defined by KRS 205.8451(9).

Section 2. Requirements for a Psychiatric Nurse. A registered nurse employed by a participating community mental health center shall be considered a psychiatric or mental health nurse if the individual[he or she]:

(1) Possesses a Master of Science in nursing with a specialty in psychiatric or mental health nursing;

(2)(a) Is a graduate of a four (4) year nursing educational program with a Bachelor of Science in nursing; and

(b) Possesses at least one (1) year of experience in a mental health setting;

(3)(a) Is a graduate of a three (3) year nursing educational program; and

(b) Possesses at least two (2) years of experience in a mental health setting;

(4)(a) Is a graduate of a two (2) year nursing educational program with an associate degree in nursing; and

(b) Possesses at least three (3) years of experience in a mental health setting; or

(5) Possesses any level of education with American Nursing Association certification as a psychiatric or mental health nurse.

Section 3. Community Mental Health Center Services Manual. The conditions for participation, services covered, and limitations for the community mental health center services component of the Medicaid Program shall be as specified in:

(1) This administrative regulation; and

(2) The Community Mental Health Center Services Manual.

Section 4. Covered Services. (1) Services covered pursuant to this administrative regulation and pursuant to the Community Mental Health Center Services Manual shall include:

(a) Rehabilitative mental health and substance use disorder services including:

1.[Inpatient services;

(b) Outpatient Services;

(c) Individual outpatient therapy;

2.[(d)] Group outpatient therapy;

3.[(e)] Family outpatient therapy;

4.[(f)] Collateral outpatient[services including collateral] therapy;

5.[(g)] Intensive in-home services;

(h) Home visits;

(i) Emergency services;

(j) Personal care home services;

(k) Therapeutic rehabilitation services[for adults;

(l) Therapeutic rehabilitation services for children];

6.[(m)] Evaluations, examinations, and testing including

Psychological testing;

7.[(n)] Physical examinations;

(o) Services in a detoxification setting;

(p) Chemotherapy services;

(q) Screening;

8.[(r)] An assessment;

9.[(s)] Crisis intervention;

10.[(t)] Service planning;

11.[(u)] A screening, brief intervention, and referral to treatment;

12.[(v)]/[Medication-assisted treatment for a substance use disorder;

13.[(w)] Mobile crisis services;

13.14.[(x)] Assertive community treatment;

14.15.[(y)] Intensive outpatient program services;

15.16.[(z)] Residential crisis stabilization services;

16.17.[(aa)] Partial hospitalization;

17.18.[(bb)] Residential services for substance use disorders;

18.19.[(cc)] Day treatment;

19.20.[(dd)] Comprehensive community support services;

20.21.[(ee)] Peer support services; or

21.22.[(ff)] Parent or family peer support services; or

(b) Physical health services including:

**1. Physical examinations; or**

**2. Medication prescribing and monitoring.**

(2)(a) To be covered under this administrative regulation, a service listed in subsection (1) of this section shall be ~~inpatient services, outpatient services, therapeutic rehabilitation services, emergency services and personal care home services shall be covered if the service~~:

1. ~~(1) Is~~ Provided by a community mental health center that is:

a. Currently enrolled in the Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in paragraph (b) of this subsection, currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

2. ~~;~~ and

(2) ~~Is~~ Provided in accordance with:

a. This administrative regulation; and

b. The Community Mental Health Center Services Manual.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the ~~fee-for-service~~ Medicaid Program ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

Section 5. Electronic Documents and Signatures. (1) The creation, transmission, storage, or other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.120 and all applicable state and federal laws and regulations.

(2) A CMHC choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be complied with by each of the center's employees, officers, agents, and contractors; ~~and~~ ~~and~~

2. Stipulate which individuals have access to which electronic signatures and password authorization; ~~and~~

**3. Identify each electronic signature for which an individual has access; ~~and~~**

(b) Ensure that electronic signatures are created, transmitted, and stored securely; ~~and~~

(c) Develop a consent form ~~that~~ ~~which~~ shall:

1. Be completed and executed by each individual utilizing an electronic signature; and

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; ~~and~~

(d) Provide the department, **immediately upon request**, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature ~~immediately upon request~~.

Section 6. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, ~~on~~ ~~during~~ the same day of service ~~time period~~.

(2) For example, if a recipient is receiving a behavioral health service from an independently enrolled behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient ~~during the same time period~~ by a community mental health center **on the same day of service**.

Section 7. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information, **if available**, regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services;

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the Cabinet for Health and Family Services upon request;

3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;

4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient; and

(c) Document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

(6) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(7)(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; and

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the treatment plan if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a **mental health associate working under supervision or a professional equivalent** ~~practitioner~~

working under supervision shall be co-signed and dated by a licensed[the] supervising professional[providing the service].

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(8) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) A provisional[An appropriate] diagnosis;

(b) A referral for further consultation and disposition, if applicable; or[and]

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(9)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(10)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Dated;

3. Titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered[coverable] under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(11)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

b. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who was terminated from receiving services shall be fully completed within ten (10) days following termination.

(12) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(13) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient within ten (10) business days of the transfer or referral.

(14)(a) If a CMHC's[provider's] Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of a[the] provider, the health records regarding recipients to whom the CMHC has provided services[of the provider] shall:

1. Remain the property of the CMHC[provider]; and

2. Be subject to the retention requirements established in subsection (4)[(13)] of this section.

(b) A CMHC[provider] shall have a written plan addressing how to maintain health records in the event of a[the] provider's death.

Section 8. Medicaid Program Participation Compliance. (1) A CMHC[provider] shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a CMHC[provider] receives any duplicate payment or overpayment from the department, regardless of reason, the CMHC[provider] shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 9. [Provider Eligibility. (1) To be eligible to provide, and be reimbursed, for a service pursuant to this administrative regulation, a community mental health center shall be:

(a) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Except as established in subsection (2) of this section, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the Medicaid Program if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program.

Section 10. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10.[14.] Auditing Authority. The department shall have the authority to audit any/:

(1) claim;:

(2) medical record;: or

(3) documentation associated with any claim or medical record.

Section 11.[12.] Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12.[13.] Appeal Rights. (1) An appeal of an adverse action by the[a] department [decision] regarding a [Medicaid] recipient who is not enrolled with a managed care organization [based upon an application of this administrative regulation] shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010[a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 4:674].

Section 13.[14.][7-] Incorporation by Reference. (1) The "Community Mental Health Center Services Manual", May 2014[December 2013][January 2008 edition], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary  
APPROVED BY AGENCY: April 11, 2014

FILED WITH LRC: April 14, 2014 at 11 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Community Alternatives**  
**(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:045. Reimbursement provisions and requirements regarding**~~(Payments for)~~ **community mental health center services.**

RELATES TO: KRS 205.520(3), 210.370

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 447.325, 42 U.S.C. 1396a-d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program~~[of Medical Assistance]~~. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed ~~[,] or opportunity presented by federal law to qualify for federal Medicaid funds~~~~[for the provision of medical assistance to Kentucky's indigent citizenry]~~. This administrative regulation establishes the reimbursement provisions and requirements regarding ~~[method for determining amounts payable by the Medicaid Program for]~~ community mental health center services provided to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. Definitions. (1) "Community mental health center" or "CMHC" means a facility which meets the community mental health center requirements established in 902 KAR 20:091.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(6) "Provider" is defined by KRS 205.8451(7).

(7) "Recipient" is defined by KRS 205.8451(9).

Section 2. General Reimbursement Provisions. (1) The department shall reimburse ~~a~~~~[Community Mental Health Centers.]~~ participating in-state community mental health center~~[centers shall be reimbursed]~~ as established in this subsection.~~[follows:]~~

~~(a)~~~~[(4) Effective July 1, 2005]~~ The payment rate that was in effect on June 30, 2002, for ~~the community mental health center for~~ community mental health center services shall remain in effect~~[throughout state fiscal year (SFY) 2006]~~ and there shall be no cost settling.

~~(b)~~~~[(2)]~~ Allowable costs shall not:

1. Exceed customary charges which are reasonable; or

2. ~~[(a) Allowable costs shall not]~~ Include:

a.~~[1.]~~ The costs associated with political contributions;

b.~~[2.]~~ Travel or related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities);

c.~~[3.]~~ The costs of motor vehicles used by management personnel which exceed \$20,000 total valuation annually (unless the excess cost is considered as compensation to the management personnel); or

d.~~[4.]~~ Legal fees for unsuccessful lawsuits against the cabinet.

(c)~~[(b)]~~ Costs (excluding transportation costs) for training or educational purposes outside the state shall be allowable costs.

(2) To be reimbursable, a service shall:

(a) Meet the requirements of 907 KAR 1:044, Section 4(2); and

(b) Be medically necessary~~[(b):~~

(a) Provided:

1. By a CMHC:

a. That is currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in subsection (3) of this section, that is currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

2. To a recipient;

(b) Medically necessary; and

(c) A covered CMHC service pursuant to 907 KAR 1:044.

(3) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program~~[if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program].~~

Section 3.~~[2.]~~ Implementation of Payment System. (1)~~(a)~~ Payments shall be based on units of service.

(b) One (1) unit for each service shall be defined as follows:

Service	Unit of Service
<del>[Inpatient Service]</del>	<del>15 minutes</del>
<del>Outpatient Service</del>	<del>15 minutes]</del>
Individual <u>Outpatient</u> Therapy	15 minutes
Group <u>Outpatient</u> Therapy	15 minutes
Family <u>Outpatient</u> Therapy	15 minutes
Collateral <u>Outpatient</u> Therapy	15 minutes
<del>[Intensive In-Home Services]</del> <del>[Therapy]</del>	<del>[15 minutes]</del>
Home Visit Service	15 minutes
Emergency Service	15 minutes
Personal Care Home Service	15 minutes
Evaluations, Examinations, and Testing <del>including</del> Psychological Testing	15 minutes
Therapeutic Rehabilitation <del>[for Children]</del>	<del>15 minutes</del> <del>[1 hour]</del>
Medication Prescribing and Monitoring <del>[Therapeutic Rehabilitation for Adults]</del>	1 hour
Chemotherapy Service]	15 minutes
Physical Examinations	15 minutes
<del>[Services in a Detoxification Setting]</del>	<del>15 minutes]</del>
Screening	15 minutes
Assessment	15 minutes
Crisis Intervention	15 minutes
Service Planning	15 minutes
Screening, Brief Intervention, and Referral to Treatment	15 minutes
<del>[Medication Assisted Treatment for a Substance Use Disorder]</del>	<del>Per Diem</del> <del>[15 minutes]</del>
Mobile Crisis Services	1 hour <del>[15 minutes]</del>
Assertive Community Treatment	Per Diem <del>[15 minutes]</del>
Intensive Outpatient Program Services	Per Diem <del>[15 minutes]</del>
Residential Crisis Stabilization Services	Per Diem <del>[15 minutes]</del>
Residential Services for Substance Use Disorders	Per Diem <del>[15 minutes]</del>
Partial Hospitalization	Per Diem <del>[15 minutes]</del>
Day Treatment	1 hour <del>[15 minutes]</del>
Comprehensive Community Support Services	15 minutes
Peer Support Services	15 minutes
<del>[Parent or Family Peer Support Services]</del>	<del>15 minutes]</del>

(2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as one (1) unit.

(3) Except for an initial unit of a service, a service that is:

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(a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

(b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

(4) An individual provider shall not exceed four (4) units of service in one (1) hour.

(5) An overpayment[Overpayments] discovered as a result of an audit[audit] shall be settled through recoupment or withholding.

(6) A community mental health center[The vendor] shall:

**(a) Complete an annual cost report on forms provided by the department[cabinet] (and included in the Community Mental Health Center[Intellectual Disability] Reimbursement Manual;**

**(b) No later than ninety (90) days from the end of the community mental health center's[vendor's] accounting year, submit the cost report to the department; and**

**(c) the vendor shall maintain an acceptable accounting system to account for the:**

**(a) 1. The Cost of total services provided;**

**(b) 2. Charges for total services rendered; to and**

**(c) 3. Charges for covered services rendered eligible recipients.**

(7) A[Each] community mental health center shall make available to the department all recipient records and fiscal records:

**(a) cabinet At the end of each fiscal reporting period;**

**(b) Upon request by, and at intervals as the department; and**

**(c) cabinet may require, all patient and fiscal records of the provider. Subject to reasonable prior notice by the department[cabinet].**

(8) Payments due a community mental health center shall be made at least once a month[reasonable intervals but not less often than monthly].

Section 4.3. Nonallowable Costs. The department[cabinet] shall not reimburse:

**(1) make reimbursement Under the provisions of this administrative regulation for a service that is services not covered by 907 KAR 1:044; or**

**(2) For, mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the [Community Mental Health Center[Intellectual Disability] Reimbursement Manual].**

Section 5.4. Reimbursement of Out-of-state Providers. Reimbursement to a participating out-of-state community mental health center[centers] shall be the lesser of the:

**(1) Lower of Charges for the service;**

**(2) or the Facility's rate as set by the state Medicaid Program in the other state; or**

**(3) the Upper limit for that type of service in effect for Kentucky providers.**

Section 6.5. Appeal Rights. A community mental health center[provider] may appeal a Department for Medicaid Services decision as to the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 7.6. Not Applicable to Managed Care Organization. A managed care organization shall not be required to reimburse for community mental health center services in accordance with this administrative regulation.

Section 8. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

**(1) Receipt of federal financial participation for the reimbursement; and**

**(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.**

**[Section 9. Incorporation by Reference. (1) The "Community Mental Health Center[Intellectual Disability] Reimbursement Manual", December 2013] July 2005**

edition"] is incorporated by reference.

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or online at the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.]**

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 11, 2014

FILED WITH LRC: April 14, 2014 at 11 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, May 13, 2014)

**907 KAR 1:054. Coverage provisions and requirements regarding federally-qualified health center services, federally-qualified health center look-alike services, and primary care center[and federally-qualified health center] services.**

RELATES TO: KRS 205.520, 310.005, 314.011, 335.100, 42 C.F.R. 400.203, 405.2401, 2412-2416, 2446, 2448, 2450, 2452, 441 Subpart E and F, 447.53, 42 U.S.C. 1395x(aa), 42 U.S.C. 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to primary care center, **and** federally-qualified health center services, **and** **federally-qualified health center look-alike**[for which payment shall be made by the Medicaid Program on behalf of both the categorically-needy and medically-needy].

Section 1. Definitions. (1) "Advanced practice registered nurse[practitioner]" is defined by KRS 314.011(7).

(2) "Certified social worker" means an individual who:

**(a) meets the requirements established in KRS 335.080; and**

**(b) Has at least a master's degree in social work.**

(3) "Clinical pharmacist" means a licensed pharmacist whose scope of service includes taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs, or surveillance for adverse reactions and drug interactions.

**(4) (3) "Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.**

**(5) "Club house model of psychosocial rehabilitation" means a form of psychosocial rehabilitation that focuses on self-help, friendship, emotional support, acceptance, and meaningful and gainful employment.**

**(5) (6) "Community support associate" means an individual who:**

**(a) Meets the community support associate requirements established in 908 KAR 2:250; and**

**(b) Has been certified by the Department for Behavioral Health, Intellectual and Developmental Disabilities as a community support associate.**

**(5) (6) (7) (4) "Department" means the Department for Medicaid Services or its designee.**

**(6) (7) (8) (5) "Emergency condition" means a condition or**



situation requiring an emergency service pursuant to 42 C.F.R. 447.53.

~~(7)/(8)/(9)~~ "Enrollee" means a recipient who is enrolled with a managed care organization.

~~(8)/(9)/(10)~~ "Face-to-face" means occurring:

(a) In person; or

(b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

~~(9)/(10)/(11)~~ "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

~~(12)~~ "Federal financial participation" is defined in 42 C.F.R. 400.203.

~~(10)/(11)/(13)/(14)~~ "Federally-qualified health center" or "FQHC" is defined by 42 U.S.C. 1396d(l)(2)(B).

~~(11)/(12)/(14)~~ "Federally-qualified health center look-alike" or "FQHC look-alike" means an entity that is currently approved by the United States Department of Health and Human Services, Health Resources and Services Administration, and the Centers for Medicare and Medicaid Services to be a federally-qualified health center look-alike.

~~(12)/(13)/(15)~~ "Fountain House" means the professional self-help program located in New York City about which information is available on the Web site of <http://www.fountainhouse.org/>.

~~(14)/(16)/(7)~~ "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

~~(13)~~ "Licensed behavior analyst" is defined by KRS 319C.010(6).

~~(14)~~ "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

~~(15)/(17)~~ "Licensed marriage and family therapist" is defined by KRS 335.300(2).

~~(16)/(18)~~ "Licensed professional art therapist" is defined by KRS 309.130(2).

~~(17)~~ "Licensed professional art therapist associate" is defined by KRS 309.130(3).

~~(18)~~ "Licensed professional clinical counselor" is defined by KRS 335.500(3).

~~(19)/(17)/(19)~~ "Licensed professional counselor associate" is defined by KRS 335.500(3).

~~(20)/(18)/(20)~~ "Licensed psychological associate" means:

(a) An individual who:

1. ~~(a)~~ Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2. ~~(b)~~ Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) A certified psychologist.

~~(21)/(19)/(21)~~ "Licensed psychological practitioner" means:

(a) An individual who meets the requirements established in KRS 319.053; or

(b) A certified psychologist with autonomous functioning.

~~(22)/(20)/(22)~~ "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

~~(23)/(21)/(23)~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

~~(24)/(22)/(24)~~ "Marriage and family therapy associate" is defined by KRS 335.300(3).

~~(25)/(23)/(25)~~ "Medically necessary" means that a covered benefit or service is necessary in accordance with 907 KAR 3:130.

~~(26)/(24)/(26)~~ "Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

~~(27)/(25)/(27)~~ "Nutritionist" is defined by KRS 310.005(4).

~~(28)/(26)/(28)~~ "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

~~(29)/(10)~~ "Physician" is defined by KRS 205.510(11) and 42 C.F.R. 405.2401(b).

~~(29)/(27)/(30)~~ "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

~~(30)/(29)/(31)~~ "Primary care center" or "PCC" means an entity meeting the primary care center requirements established in 902 KAR 20:058.

~~(31)/(29)/(32)~~ "Qualified mental health professional" is defined by KRS 202A.011(12).

~~(33)~~ "Recipient" is defined by KRS 205.8451(9).

~~(32)/(30)/(34)~~ "State plan" is defined by 42 C.F.R. 400.203.

~~(35)~~ "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

Section 2. Primary Care Center Covered Services Other Than Behavioral Health Services. (1) The department shall cover, and a primary care center shall provide, the following services:

(a) Medical diagnostic or treatment services provided by a physician, advanced practice registered nurse[practitioner], or a physician assistant if licensed under state authority;

(b) Treatment of injuries or minor trauma;

(c) Prenatal or postnatal care;

(d) Preventive health services including well-baby care, well-child care, immunization, or other preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource if services necessary to the health of the patient are not provided directly by the center; and

(f) Health education, including distribution of written material, provided by appropriate personnel to local school systems, civic organizations, or other concerned local groups.

(2) The department shall cover the following services, and a primary care center shall provide at least two (2) of the following services:

(a) Dental services;

(b) Optometric services;

(c) Family planning services listed and as limited in 907 KAR 1:048;

(d) Home health services listed and as limited in 907 KAR 1:030;

(e) Social services counseling;

(f) Pharmacy services which shall meet the coverage criteria established in 907 KAR 1:019;

(g) Nutritional services provided by a nutritionist, including individual counseling relating to nutritional problems or nutritional education or group nutritional services; or

(h) Nurse midwifery services which shall be provided:

1. As a program including prenatal services to expectant mothers, delivery or postnatal services; and

2. By a nurse midwife.

(3) The department shall cover the following services, and a primary care center may provide the following services:

(a) Excluding institutional care, other state plan services;

(b) Holding or observation accommodations;

(c) Outreach services provided as a package structured to identify health care needs in the service area;

(d) Clinical pharmacist services; or

(e) Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced practice registered nurse practitioner within the provider's legally authorized scope of service;

(f) Services or supplies furnished as incidental[an incident] to services provided by a physician, physician assistant, advanced practice registered nurse[practitioner], or nurse midwife if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415; or

(g) Services or supplies incidental to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. [redacted].

Section 3. Federally-Qualified Health Center and Federally-

Qualified Health Center Look-Alike Covered Services Other Than Behavioral Health Services. A federally-qualified health center **or a federally-qualified health center look-alike** shall provide:

- (1) Federally-qualified health center services pursuant to 42 U.S.C. 1395x(aa)(3);
- (2) Federally-qualified health center services pursuant to 42 U.S.C. 1396d(l)(2)(A);
- (3) Other Medicaid-covered ambulatory outpatient services established in the state plan; or
- (4) Any combination of the services described in subsections (1), (2), and (3) of this section.

Section 4. Primary Care Center, Federally-Qualified Health Center, and Federally-Qualified Health Center Look-Alike Covered Behavioral Health Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for **a**:

- (a) **A** mental health disorder;
- (b) **A** substance use disorder; or
- (c) Co-occurring mental health and substance use disorders.

(2) The department shall cover, and a primary care center, federally-qualified health center, or federally-qualified health center look-alike may provide, the following services:

(a) Behavioral health services provided by a **licensed[clinical] psychologist, licensed clinical social worker, or advanced practice registered nurse[practitioner]** within the provider's legally authorized scope of service; or

(b) Services or supplies incidental to a **licensed[clinical] psychologist's or licensed clinical social worker's behavioral health services** if the service or supply meets the criteria established in 42 C.F.R. 405.2452.

(3) In addition to the services referenced in subsection (2) of this section, the following behavioral health services provided by a primary care center, federally-qualified health center, or federally-qualified health center look-alike shall be covered under this administrative regulation in accordance with the corresponding following requirements:

- (a) A screening provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist **[if the licensed psychologist is the billing provider for the service]**;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor **[if the licensed professional clinical counselor is the billing provider for the service]**;

11. A certified social worker working under the supervision of a licensed clinical social worker **[if the licensed clinical social worker is the billing provider for the service]**;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist **[if the licensed marriage and family therapist is the billing provider for the service]**; **[or]**

13. A physician assistant working under the supervision of a physician **[if the physician is the billing provider for the service]**;

14. **A licensed professional art therapist; or**
15. **A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;**

- (b) An assessment provided by:
  1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist **[if the licensed psychologist is the billing provider for the service]**;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor **[if the licensed professional clinical counselor is the billing provider for the service]**;

11. A certified social worker working under the supervision of a licensed clinical social worker **[if the licensed clinical social worker is the billing provider for the service]**;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist **[if the licensed marriage and family therapist is the billing provider for the service]**; **[or]**

13. A physician assistant working under the supervision of a physician **[if the physician is the billing provider for the service]**;

14. **A licensed professional art therapist;**

15. **A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;**

16. **A licensed behavior analyst; or**

17. **A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;**

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner; or

3. A licensed psychological associate working under the supervision of a licensed psychologist **[if the licensed psychologist is the billing provider for the service]**;

(d) Crisis intervention provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist **[if the licensed psychologist is the billing provider for the service]**;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor **[if the licensed professional clinical counselor is the billing provider for the service]**;

11. A certified social worker working under the supervision of a licensed clinical social worker **[if the licensed clinical social worker is the billing provider for the service]**;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist **[if the licensed marriage and family therapist is the billing provider for the service]**; **[or]**

13. A physician assistant working under the supervision of a physician **[if the physician is the billing provider for the service]**;

14. **A licensed professional art therapist; or**

15. **A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;** **[14. A peer support specialist working under the supervision of a mental health professional;**

15. **A family peer support specialist working under the supervision of a mental health professional; or**

16. **A youth peer support specialist working under the supervision of a mental health professional;]**

(e) Service planning provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;



under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(j) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist

[if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor[if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker[if the licensed clinical social worker is the billing provider for the service];

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist[if the licensed marriage and family therapist is the billing provider for the service];[or]

13. A physician assistant working under the supervision of a physician[if the physician is the billing provider for the service];

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

(k) Medication-assisted treatment for a substance use disorder provided by:

1. A physician;
2. A psychiatrist; or
3. An advanced practice registered nurse;

(l) Day treatment provided by a team of at least two (2) of the following:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist

[if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor[if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker[if the licensed clinical social worker is the billing provider for the service];

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist[if the licensed marriage and family therapist is the billing provider for the service];[or]

13. A physician assistant working under the supervision of a physician[if the physician is the billing provider for the service];

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;[14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;]

(l) [(m)] Comprehensive community support services provided by a team of at least two (2) of the following:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist

[if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor[if the licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker[if the licensed clinical social worker is the billing provider for the service];

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist[if the licensed marriage and family therapist is the billing provider for the service];

13. A physician assistant working under the supervision of a physician[if the physician is the billing provider for the service];[or]

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst;

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; or

18. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional;

16. A youth peer support specialist working under the supervision of a mental health professional; or

17. A community support associate;

(m) [(n)] Peer support provided by:

1. A peer support specialist working under the supervision of a mental health professional;

2. A family peer support specialist working under the supervision of a mental health professional; or

3. A youth peer support specialist working under the supervision of a mental health professional;

(e) Mobile crisis services provided by a team of at least two (2) of the following:

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A licensed psychological practitioner;
9. A licensed psychological associate working under the supervision of a licensed psychologist

[if the licensed psychologist is the billing provider for the service];

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(p) Assertive community treatment provided by a team that includes at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(q) Intensive outpatient program provided by a team that includes at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate; or

(n)/(o)/(r) Residential crisis stabilization provided by a team of at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(s) Residential services for substance use disorders provided by a team of at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(t) Therapeutic rehabilitation program services provided by a team of at least two (2) of the following individuals:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;  
 9. A licensed psychological associate working under the supervision of a licensed psychologist ~~if the licensed psychologist is the billing provider for the service~~;  
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor ~~if the licensed professional clinical counselor is the billing provider for the service~~;  
 11. A certified social worker working under the supervision of a licensed clinical social worker ~~if the licensed clinical social worker is the billing provider for the service~~;  
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist ~~if the licensed marriage and family therapist is the billing provider for the service~~; ~~or~~  
 13. A physician assistant working under the supervision of a physician;  
 14. ~~A licensed professional art therapist; or~~  
 15. ~~A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the physician is the billing provider for the service~~;  
 16. ~~A peer support specialist working under the supervision of a mental health professional;~~  
 17. ~~A family peer support specialist working under the supervision of a mental health professional; or~~  
 18. ~~A youth peer support specialist working under the supervision of a mental health professional; or~~  
 19. ~~(u) Parent or family peer support provided by:~~  
 20. ~~1. A peer support specialist working under the supervision of a mental health professional;~~  
 21. ~~2. A family peer support specialist working under the supervision of a mental health professional; or~~  
 22. ~~3. A youth peer support specialist working under the supervision of a mental health professional.~~  
 (4)(a) A screening shall:  
 1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders ~~disorder~~;  
 2. Not establish the presence or specific type of disorder; and  
 3. Establish the need for an in-depth assessment.  
 (b) An assessment shall:  
 1. Include gathering information and engaging in a process with the individual that enables the provider to:  
 a. Establish the presence or absence of a mental health disorder, ~~or~~ substance use disorder, ~~or co-occurring disorders~~;  
 b. Determine the individual's readiness for change;  
 c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and  
 d. Engage the individual in developing an appropriate treatment relationship;  
 2. Establish or rule out the existence of a ~~clinical~~ ~~clinic~~ disorder or service need;  
 3. Include working with the individual to develop a treatment and service plan; and  
 4. Not include a psychological or psychiatric evaluation or assessment.  
 (c) Psychological testing shall include:  
 1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and  
 2. Interpretation and a written report of testing results.  
 (d) Crisis intervention:  
 1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:  
 a. The recipient; or  
 b. Another individual;  
 2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;  
 3. Shall be provided:  
 a. On-site at an ~~FQHC, FQHC/FQHQ, FQHJ~~ look-alike, or

~~PCC(In an office, home, or community setting where the individual is experiencing the crisis)~~;  
 b. As an immediate relief to the presenting problem or threat; and  
 c. In a face-to-face, one-on-one encounter between the provider and the recipient;  
 4. May include verbal de-escalation, risk assessment, or cognitive therapy; and  
 5. Shall be followed by a referral to noncrisis services if applicable.  
 (e)1. Service planning shall consist of assisting a recipient in creating an individualized plan for services needed ~~for maximum reduction of an intellectual disability and to restore the individual to his or her best possible functional level~~ ~~to maintain functional stability or return to stability as soon as possible in order to avoid out-of-home care~~.  
 2. A service plan:  
 a. Shall be directed by the recipient; and  
 b. May include:  
 (i) A mental health advance directive being filed with a local hospital;  
 (ii) A crisis plan; or  
 (iii) A relapse prevention strategy or plan.  
 (f) Individual outpatient therapy shall:  
 1. Be provided to promote the:  
 a. Health and wellbeing of the individual; or  
 b. Recovery from a substance ~~use disorder, mental health disorder, or co-occurring related disorders~~ ~~related disorder~~;  
 2. Consist of:  
 a. A face-to-face, one-on-one encounter between the provider and recipient; and  
 b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;  
 3. Be aimed at:  
 a. Reducing adverse symptoms;  
 b. Reducing or eliminating the presenting problem of the recipient; and  
 c. Improving ~~functionality~~ ~~functioning~~; and  
 4. Not exceed three (3) hours per day.  
 (g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:  
 a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and  
 b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.  
 2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.  
 (h)1. Group outpatient therapy shall:  
 a. Be provided to promote the:  
 (i) Health and wellbeing of the individual; or  
 (ii) Recovery from a substance ~~use disorder, mental health disorder, or co-occurring related disorders~~ ~~related disorder~~;  
 b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;  
 c. Be provided to a recipient in a group setting:  
 (i) Of nonrelated individuals; and  
 (ii) Not to exceed ~~twelve (12)~~ ~~eight (8)~~ individuals in size;  
 d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;  
 e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and  
 f. Not exceed three (3) hours per day.  
 2. The group shall have a:  
 a. Deliberate focus; and  
 b. Defined course of treatment.  
 3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.  
 4. The provider shall keep individual notes regarding each

recipient within the group and within each recipient's health record.

(i) 1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(i) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

c. Referring a recipient to:

(i) Therapy; or

(ii) Other additional services to address substance use if the recipient is determined to need other additional services.

~~(k) [Medication-assisted treatment for a substance use disorder:~~

~~1. Shall include:~~

~~a. Any opioid addiction treatment that includes a United States Food and Drug Administration-approved medication for the detoxification or maintenance treatment of opioid addiction along with counseling or other supports;~~

~~b. Comprehensive maintenance;~~

~~c. Medical maintenance;~~

~~d. Interim maintenance;~~

~~e. Detoxification; or~~

~~f. Medically supervised withdrawal;~~

~~2. May be provided in:~~

~~a. An opioid treatment program;~~

~~b. A medication unit affiliated with an opioid treatment program;~~

~~c. A physician's office except for methadone; or~~

~~d. Other community setting; and~~

~~3. Shall increase the likelihood for cessation of illicit opioid use or prescription opioid abuse.~~

~~(l) 1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:~~

~~a. An emotional disability or neurobiological or substance use disorder; and~~

~~b. A high risk of out-of-home placement due to a behavioral health issue.~~

~~2. Day treatment services shall:~~

~~a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health disorder, or co-occurring mental health and substance use disorders[disorder]);~~

~~b. Have unified policies and procedures that:~~

~~(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and~~

~~(ii) Have been approved by the recipient's local education authority and the day treatment provider;~~

~~c. Include:~~

~~(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;~~

~~(ii) Behavior management and social skill training;~~

~~(iii) Independent living skills that correlate to the age and~~

~~development stage of the recipient; or~~

~~(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and~~

~~d. Be provided:~~

~~(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);~~

~~(ii) On school days and during scheduled breaks;~~

~~(iii) In coordination with the recipient's individualized[individual] educational plan if the recipient has an individualized[individual] educational plan;~~

~~(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and~~

~~(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.~~

3. To provide day treatment services, an FQHC, an FQHC look-alike, or a PCC shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with subsection ~~(3)(k)~~~~(3)(l)~~ of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of ~~residential crisis stabilization~~ services as stated in ~~subparagraphs 1 and 2~~~~subparagraph 1~~ of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs;

f. The capacity to document and maintain individual case records; and

g. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

~~(l)~~~~(m)~~ 1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in community-integrated housing;

b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan;

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; or

(ii) Teaching parenting skills, teaching community resource access and utilization, teaching emotional regulation skills, teaching crisis coping skills, teaching how to shop, teaching about transportation, teaching financial management, or developing and enhancing interpersonal skills; and

d. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

~~2.~~~~3.~~ To provide comprehensive community support services, an FQHC, an FQHC look-alike, or a PCC shall have:

a. The capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection ~~(3)(l)~~~~(3)(m)~~ of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs; and

f. The capacity to document and maintain individual case records.

~~(m)~~~~(n)~~ 1. ~~Peer support services shall:~~

~~a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder,~~

substance use disorder, or co-occurring mental health and substance use disorder to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer or parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:220;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and

f. Be identified in each recipient's treatment plan.

2. To provide peer support services, an FQHC, an FQHC look-alike, or a PCC shall:

a. Have demonstrated the capacity to provide the core elements of peer support services for the behavioral health population being served including the age range of the population being served;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220;

c. Use a qualified mental health professional to supervise peer support specialists;

d. Have the capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (3)(n) of this section and to coordinate the provision of services among team members;

e. Have the capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;

f. Have demonstrated experience in serving individuals with behavioral health disorders;

g. Have the administrative capacity to ensure quality of services;

h. Have a financial management system that provides documentation of services and costs; and

i. Have the capacity to document and maintain individual case records.

(o)1. Mobile crisis services shall:

a. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

b. Be a crisis response in a home or community setting to provide an immediate evaluation, triage, and access to acute substance use disorder services including treatment and supports to:

(i) Reduce symptoms or harm; or

(ii) Safely transition an individual in an acute crisis to appropriate crisis stabilization and detoxification supports or services.

2. To provide mobile crisis services, an FQHC, an FQHC look-alike, or a PCC shall have:

a. The capacity to employ staff authorized to provide mobile crisis services in accordance with subsection (3)(o) of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;

c. Access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

d. Demonstrated experience in serving individuals with behavioral health disorders;

e. The administrative capacity to ensure quality of services;

f. A financial management system that provides

documentation of services and costs;

g. The capacity to document and maintain individual case records; and

h. Knowledge of substance use disorders.

(p)1. Assertive community treatment shall:

a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a serious mental illness;

b. Use a multidisciplinary team of at least two (2) of the following professionals:

(i) A psychiatrist;

(ii) A nurse;

(iii) A case manager; or

(iv) A therapist; and

c. Include:

(i) Assessment;

(ii) Treatment planning;

(iii) Case management;

(iv) Psychiatric services;

(v) Medication management administration;

(vi) Individual outpatient therapy;

(vii) Family outpatient therapy;

(viii) Group outpatient therapy;

(ix) Mobile crisis intervention;

(x) Mental health consultation; or

(xi) Family support and basic living skills.

2. To provide assertive community treatment services, an FQHC, an FQHC look-alike, or a PCC shall:

a. Employ one (1) or more teams:

(i) Led by a qualified mental health professional; and

(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, a qualified mental health professional, a case manager, or a co-occurring disorder specialist;

b. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

c. Have the capacity to employ staff authorized to provide assertive community treatment services in accordance with subsection (3)(p) of this section and to coordinate the provision of services among team members;

d. The capacity to provide the full range of assertive community treatment services as stated in this paragraph;

e. Demonstrated experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community;

f. The administrative capacity to ensure quality of services;

g. A financial management system that provides documentation of services and costs; and

h. The capacity to document and maintain individual case records.

~~(q)1.~~ Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder, or substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy; and

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education.

2. During psycho-education, the recipient or family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.



3. An intensive outpatient program treatment plan shall:

- Be individualized; and
- Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, an FQHC, an FQHC look-alike, or a PCC shall have:

- Access to a board-certified or board-eligible psychiatrist for consultation;
- Access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring[management];
- Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10)[fifteen (15)][four (4) clients] to one (1)[recipient];
- The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment[recovery] principles;
- The capacity to employ staff authorized to provide intensive outpatient program services in accordance with subsection (3)(m)[(3)(q)] of this section and to coordinate the provision of services among team members;
- The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;
- Demonstrated experience in serving individuals with behavioral health disorders;
- The administrative capacity to ensure quality of services;
- A financial management system that provides documentation of services and costs; and
- The capacity to document and maintain individual case records.

(n)[(o)]1. Residential crisis stabilization services shall be provided in a crisis stabilization unit.

2. A crisis stabilization unit shall:

- Be a community-based, residential program that offers an array of services including:
  - Screening;
  - Assessment;
  - Treatment planning;
  - Individual outpatient therapy;
  - Family outpatient therapy;
  - Group outpatient therapy; and
  - Psychiatric services;
- Provide services in order to:
  - Stabilize a crisis and divert an individual from a higher level of care;
  - Stabilize an individual and provide treatment for acute withdrawal, if applicable; and
  - Re-integrate the individual into the individual's community or other appropriate setting in a timely fashion;
- Not be part of a hospital;
- Be used when an individual:
  - Is experiencing a behavioral health emergency that cannot be safely accommodated within the individual's community; and
  - Needs overnight care that is not hospitalization;
- Not contain more than sixteen (16) beds; and
- Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

3. Residential crisis stabilization shall not include:

- Room and board;
- Educational services;
- Vocational services;
- Job training services;
- Habilitation services;
- Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;
- Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;
- Recreational activities;
- Social activities; or
- Services required to be covered elsewhere in the state plan.

4. To provide residential crisis stabilization services, an FQHC, an FQHC look-alike, or a PCC shall have:

a. The capacity to employ staff authorized to provide residential crisis stabilization in accordance with subsection (3)(r) of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;

c. Access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

d. Demonstrated experience in serving individuals with behavioral health disorders;

e. The administrative capacity to ensure the quality of services;

f. A financial management system that provides documentation of services and costs;

g. The capacity to document and maintain individual case records; and

h. Knowledge of substance use disorders.

(s)1. Residential services for substance use disorders shall:

- Be provided in twenty-four (24) hour per day units;
- Be short or long term to provide intensive treatment and skills building in a structured and supportive environment;
- Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;
- Be provided in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;
- Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;
- Last less than thirty (30) days;
- Be provided under the medical direction of a physician;
- Provide continuous nursing services;
- Be based on individual need and may include:
  - Screening;
  - Assessment;
  - Service planning;
  - Individual outpatient therapy;
  - Group outpatient therapy; or
  - Family outpatient therapy; and
- Be provided in accordance with 908 KAR 1:370.

2. A residential service for substance use disorder building shall have more than eight (8) but less than seventeen (17) beds.

3. A short-term length-of-stay for residential services for substance use disorders shall:

- Be between fourteen (14) and twenty-eight (28) days in duration;
- Include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:
  - Stabilize and maintain a person's substance use disorder; and
  - Help the recipient develop and apply recovery skills; and
- May include the services listed in subparagraph 1.i. of this paragraph.

4. A long-term length-of-stay for residential services for substance use disorders shall:

- Be between twenty-eight (28) days and ninety (90) days in duration;
- Include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:
  - Stabilize and maintain a person's substance use disorder; and
  - Help the recipient develop and apply recovery skills; and

~~c. May include the services listed in subparagraph 1.i. of this paragraph.~~

~~5. Residential services for a substance use disorder shall not include:~~

- ~~a. Room and board;~~
- ~~b. Educational services;~~
- ~~c. Vocational services;~~
- ~~d. Job training services;~~
- ~~e. Habilitation services;~~

~~f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;~~

~~g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;~~

- ~~h. Recreational activities;~~
- ~~i. Social activities; or~~

~~j. Services required to be covered elsewhere in the state plan.~~

~~6. The physical structure in which residential services for a substance use disorder are provided shall not:~~

- ~~a. Contain more than sixteen (16) beds; and~~
- ~~b. Be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.~~

~~7. To provide residential services for a substance use disorder, an FQHC, an FQHC look-alike, or a PCC shall:~~

~~a. Have the capacity to employ staff authorized to provide residential services for substance use disorders in accordance with subsection (3)(e) of this section and to coordinate the provision of services among team members;~~

~~b. Have the capacity to provide the full range of residential services for a substance use disorder as stated in this paragraph;~~

~~c. Have demonstrated experience in serving individuals with behavioral health disorders;~~

~~d. Have the administrative capacity to ensure quality of services;~~

~~e. Have a financial management system that provides documentation of services and costs;~~

~~f. Have the capacity to document and maintain individual case records; and~~

~~g. Be licensed as a nonmedical and nonhospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.~~

~~(b)1. Therapeutic rehabilitation program services shall:~~

~~a. Occur at the provider's site or in the community;~~

~~b. Be provided to an adult with a severe mental illness or to a child (under the age of twenty-one (21) years) who has a serious emotional disability;~~

~~c. Be designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level[enhance skills and offer experiential learning opportunities that are aligned with treatment goals and recovery principles]; and~~

~~d.[e.] Not be a residential program[; and~~

~~d. Be a day program based on the Fountain House clubhouse model of psychosocial rehabilitation for individuals with a serious mental illness].~~

~~2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.~~

~~3. A therapeutic rehabilitation program shall:~~

~~a. Be delivered using a variety of psychiatric rehabilitation techniques;~~

~~b. Focus on:~~

- ~~(i) Improving daily living skills;~~
- ~~(ii) Self-monitoring of symptoms and side effects;~~
- ~~(iii) Emotional regulation skills;~~
- ~~(iv) Crisis coping skill; and~~
- ~~(v) Interpersonal skills; and~~

~~c. Be delivered individually or in a group.~~

~~4. To provide therapeutic rehabilitation program services, an FQHC, an FQHC look-alike, or a PCC shall:~~

~~a. Have the capacity to employ staff authorized to provide therapeutic rehabilitation program services in accordance with~~

~~subsection (3)(n)/(3)(t) of this section and to coordinate the provision of services among team members;~~

~~b. Have the capacity to provide the full range of therapeutic rehabilitation program services as stated in this paragraph;~~

~~c. Have demonstrated experience in serving individuals with mental health disorders;~~

~~d. Have the administrative capacity to ensure quality of services;~~

~~e. Have a financial management system that provides documentation of services and costs; and~~

~~f. Have the capacity to document and maintain individual case records. [(u)1. Parent or family peer support services shall:~~

~~a. Be emotional support that is provided by a parent or family member of a child who is experiencing a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;~~

~~b. Be an evidence-based practice;~~

~~c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;~~

~~d. Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;~~

~~e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and~~

~~f. Be identified in each recipient's treatment plan.~~

~~2. To provide parent or family peer support services, a provider shall:~~

~~a. Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;~~

~~b. Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230;~~

~~c. Use a qualified mental health professional to supervise family peer support specialists;~~

~~d. Have the capacity to employ staff authorized to provide parent or family peer support in accordance with subsection (3)(u) of this section and to coordinate the provision of services among team members;~~

~~e. Have the capacity to provide the full range of parent or family peer support as stated in subparagraph 1 of this paragraph;~~

~~f. Have demonstrated experience in serving individuals with behavioral health disorders;~~

~~g. Have the administrative capacity to ensure quality of services;~~

~~h. Have a financial management system that provides documentation of services and costs; and~~

~~i. Have the capacity to document and maintain individual case records.]~~

~~(5)(a) The [following] requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health [disorder] and substance use disorders[disorder];~~

~~1. The licensing requirements established in 908 KAR 1:370;~~

~~2. The physical plant requirements established in 908 KAR 1:370;~~

~~3. The organization and administration requirements established in 908 KAR 1:370;~~

~~4. The personnel policy requirements established in 908 KAR 1:370;~~

~~5. The quality assurance requirements established in 908 KAR 1:370;~~

~~6. The clinical staff requirements established in 908 KAR 1:370;~~

~~7. The program operational requirements established in 908 KAR 1:370; and~~

~~8. The outpatient program requirements established in 908 KAR 1:370].~~

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(6) The extent and type of assessment performed ~~[at the time of a screening]~~ shall depend upon the problem of the individual seeking or being referred for services.

(7) A diagnosis or ~~clinical[clinic]~~ impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(8)(a) Direct contact between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(9) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(10) A service shall be:

(a) Stated in ~~the[a]~~ recipient's treatment plan;

(b) Provided in accordance with ~~the[a]~~ recipient's treatment plan;

(c) Provided on a regularly scheduled basis except for a screening or assessment; and

(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient.

(11) The following services or activities shall not be covered under this administrative regulation:

(a) A behavioral health service provided to:

1. A resident of;

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of face-to-face;

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

~~(12)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as specified in Section 2(2)(k).~~

~~(b)] A third party contract shall not be covered under this administrative regulation.~~

Section ~~5.[6.]~~ Drugs for Specified Immunizations. The Cabinet for Health and Family Services shall provide free, upon request, drugs necessary for the following immunizations:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine live (MMR);

(3) Poliovirus vaccine, live, oral, any type (OPV); or

(4) Hemophilus B conjugate vaccine (HBCV).

Section ~~6.[7.]~~[5.] Coverage Limits. (1)(a) Except as established in subsection (2) of this section, pharmacy service coverage shall be limited to drugs covered pursuant to 907 KAR 1:019.

(b) A drug or biological not covered through the department's pharmacy program shall be covered if necessary for treatment of an emergency condition.

(2) Laboratory service coverage shall be limited to:

(a) Services provided directly by a PCC, an FQHC, or an FQHC look-alike; or

(b) If purchased, other laboratory services covered pursuant to 907 KAR 1:028.

(3) Dental service coverage shall be limited to dental service coverage pursuant to 907 KAR 1:026.

(4) Vision service coverage shall be limited to vision service coverage pursuant to 907 KAR 1:038.

(5) Audiology service coverage shall be limited to hearing service coverage pursuant to 907 KAR 1:038.

(6) An abortion or sterilization service shall be:

(a) Allowed in accordance with:

1. 42 C.F.R. 441, Subpart E or Subpart F; and

2. KRS 205.010(3), 205.510(5), and 212.275(3); and

(b) Covered within the scope and limitations of federal law, federal regulations, and state law.

(7) Durable medical good and prosthetic coverage shall be limited to durable medical good or prosthetic coverage pursuant to 907 KAR 1:479 or 907 KAR 1:030.

(8) A holding or observation accommodation shall be covered:

(a) For no more than twenty-four (24) hours; and

(b) If:

1. The recipient's medical record:

a. Documents the appropriateness of the holding or observation accommodation; and

b. Contains a statement of conditions observed and treatment rendered during the holding time;

2. A physician:

a. Determines that the holding or observation accommodation is necessary; and

b. Is on call at all times when a recipient is held beyond the regularly scheduled hours of the center; and

3. A licensed nurse is on duty during the time the recipient patient remains beyond regularly-scheduled hours.

(9) A radiology procedure shall be covered if provided by a licensed practitioner of the healing arts or by an individual holding a valid certificate to operate sources of radiation.

Section ~~7.[8.]~~[6.] Noncovered Services. (1) The following services shall not be covered as PCC,[or] FQHC, or FQHC look-alike services:

(a)[(1)] Services provided in a hospital as defined in 42 U.S.C. 1395x(e);

(b)[(2)] Institutional services;

(c)[(3)] Housekeeping, babysitting, or other similar homemaker services;[or]

(d)[(4)] Services which are not provided in accordance with restrictions imposed by law or administrative regulation[;]

~~(e) A behavioral health service provided to:~~

~~1. A resident of:~~

~~a. A nursing facility; or~~

~~b. An intermediate care facility for individuals with an intellectual disability;~~

~~2. An inmate of a federal, local, or state:~~

~~a. Jail;~~

~~b. Detention center; or~~

~~c. Prison; or~~

~~3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;~~

~~(f) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;~~

~~(g) A consultation or educational service provided to a recipient or to others;~~

~~(h) Collateral outpatient therapy for an individual aged~~

twenty-one (21) years or older:

(i) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of face-to-face;

(j) Travel time;

(k) A field trip;

(l) A recreational activity;

(m) A social activity; or

(n) A physical exercise activity group].

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as specified in Section 2(2)(k).

(b)] A third party contract shall not be covered under this administrative regulation.

Section 8.[9.] Medical Necessity Requirement. To be covered pursuant to this administrative regulation, a service shall be:

- (1) Medically necessary for the recipient; and
- (2) Provided to a recipient.

Section 9.[10.] No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a service from an independent mental health service provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a primary care center.

Section 10.[11.] Protection, Security and Records Maintenance Requirements for All Services. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. If requested, be disclosed to an authorized representative of:
  - a. The department; or
  - b. Federal government.

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; **and**

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 11.[12.] Documentation and Records Maintenance Requirements for Behavioral Health Services. (1) The requirements in this section shall apply to health records associated with behavioral health services.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance **or Medicaid** information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

k. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the Cabinet for Health and Family Services upon request;

3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;

4. Readily accessible; and

5. Adequate for the purpose **of** establishing the current treatment modality and progress of the recipient.

(3) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(4)(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the treatment plan if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional providing the service.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(5) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) An appropriate diagnosis;

(b) A referral for further consultation and disposition, if applicable; and

(c)1. Termination of services and referral to an outside source for further services; or

2. Termination of services without a referral to further services.

(6)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(7)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not ~~covered~~coverable under this administrative regulation, or other nonreimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(8) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(9) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(10) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient.

(11)(a) If a provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of the provider, the health records of the provider shall:

1. Remain the property of the provider; and

2. Be subject to the retention requirements established in **Section 10(2) of this administrative regulation/subsection (13) of this section**.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

**Section 12.[13.] Medicaid Program Participation Requirements.** (1)(a) A participating FQHC, FQHC look-alike, or PCC shall be currently:

1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (c) of this subsection, participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(b) A satellite facility of an FQHC, an FQHC look-alike, or a PCC shall:

1. Be currently listed on the parent facility's license in accordance with 902 KAR 20:058;

2. Comply with the requirements regarding extensions established in 902 KAR 20:058; and

3. Comply with 907 KAR 1:671.

(c) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the **fee-for-service Medicaid Program**~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

(2)(a) To be initially enrolled with the department, an FQHC or FQHC look-alike shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC or FQHC look-alike.

(b) To remain enrolled and participating in the Kentucky Medicaid Program, an FQHC or FQHC look-alike shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Annually submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an FQHC or FQHC look-alike to the department.

(c) The requirements established in paragraphs (a) and (b) of this subsection shall apply to a satellite facility of an FQHC or FQHC look-alike.

(3) An FQHC, an FQHC look-alike, or a PCC that operates multiple satellite facilities shall:

(a) List each satellite facility on the parent facility's license in accordance with 902 KAR 20:058; and

(b) Consolidate claims and cost report data of its satellite facilities with the parent facility.

(4) An FQHC, an FQHC look-alike, or a PCC that has been terminated from federal participation shall be terminated from Kentucky Medicaid Program participation.

(5)(a) A participating FQHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC.

(b) A participating FQHC look-alike and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an FQHC look-alike.

(c) A participating PCC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of a PCC.

(6) An FQHC, an FQHC look-alike, or a PCC performing laboratory services shall meet the requirements established in 907 KAR 1:028 and 907 KAR 1:575.

(7)(a) If an FQHC, an FQHC look-alike, or a PCC receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(8) An FQHC, an FQHC look-alike, or a PCC shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the act.

**Section 13.[14.] Third Party Liability.** A provider shall comply with KRS 205.622.

**Section 14.[15.] Use of Electronic Signatures.** (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

- (2) A provider that chooses to use electronic signatures shall:
- (a) Develop and implement a written security policy that shall:
    1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
    2. Identify each electronic signature for which an individual has access; and
    3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
  - (b) Develop a consent form that shall:
    1. Be completed and executed by each individual using an electronic signature;
    2. Attest to the signature's authenticity; and
    3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
  - (c) Provide the department, immediately upon request, with:
    1. A copy of the provider's electronic signature policy;
    2. The signed consent form; and
    3. The original filed signature [immediately upon request].

Section 15.[16.] Auditing Authority. The department shall have the authority to audit any/:

- (1)] claim,;
- (2)] medical record,; or
- (3)] documentation associated with any claim or medical record.

Section 16.[17.] Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 17.[18.] Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 11, 2014

FILED WITH LRC: April 14, 2014 at 11 a.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Medicaid Services**  
**Division of Policy and Operations**  
**(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:082. Coverage provisions and requirements regarding rural health clinic services.**

RELATES TO: KRS 205.520, 314.011, 319.050, 335.100, 42 C.F.R. 400.203, 42 C.F.R. 405.2401(b), 405.2412-405.2417, 405.2450, 405.2452, 405.2468, 440.20, 42 C.F.R. 491.1-491.11, 42 U.S.C. 1395x(aa) and (hh)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS[Chapter] 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent

citizenry]. This administrative regulation establishes the Medicaid Program coverage provisions and requirements relating to [coverage of] rural health clinic services[for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy].

Section 1. Definitions. (1) "Advanced practice registered nurse[practitioner]" is defined by KRS [Chapter] 314.011(7).

(2) "Certified social worker" means an individual who/:

- (a)] meets the requirements established in KRS 335.080/; and
- (b)] Has at least a master's degree in social work/.

(3) ["Clinical psychologist" means a doctorate level psychologist who is licensed in accordance with KRS 319.050.

(4)]["Club house model of psychosocial rehabilitation" means a form of psychosocial rehabilitation that focuses on self-help, friendship, emotional support, acceptance, and meaningful and gainful employment.

(4)](5)] "Community support associate" means an individual who:

(a)] Meets the community support associate requirements established in 908 KAR 2:250; and

(b)] Has been certified by the Department for Behavioral Health, Intellectual and Developmental Disabilities as a community support associate.

(4)](5)](6)](3)] "Department" means the Department for Medicaid Services or its designee.

(5)](6)](7)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(6)](7)](8)] "Face-to-face" means occurring:

- (a) In person; or
- (b) Via a real-time, electronic communication that involves two (2) way interactive video and audio communication.

(7)](8)](9)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(10)] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(8)](9)](11)]["Fountain House" means the professional self-help program located in New York City about which information is available on the Web site of <http://www.fountainhouse.org/>.

(10)](12)](4)] "Homebound recipient" is defined by 42 C.F.R. 440.20(b)(4)(iv).

(9)](11)](13)](5)] "Intermittent nursing care" is defined by 42 C.F.R. 405.2401(b).

(10)](12)](14)](6)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(11)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

(12)] "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(13)](15)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(14)](16)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(15)] "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(16)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(17)](15)](17)] "Licensed professional counselor associate" is defined by KRS 335.500(3).

(18)](16)](18)] "Licensed psychological associate" means:

- (a) An individual who:
  - 1.(a)] Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and
  - 2.(b)] Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or
- (b) A certified psychologist.

(19)](17)](19)] "Licensed psychological practitioner" means:

- (a) An individual who meets the requirements established in KRS 319.053; or
- (b) A certified psychologist with autonomous functioning.

~~(20)(18)(20)~~ "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

~~(21)(19)(21)~~ "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

~~(22)(20)(22)~~ "Marriage and family therapy associate" is defined by KRS 335.300(3).

~~(23)(21)(23)~~ [(7)] "Medically necessary" means that a covered benefit or service is necessary in accordance with [the provisions of] 907 KAR 3:130 [Section 2].

~~(24)(22)(24)~~ [(8)] ["Nurse-midwife" is defined by 42 C.F.R. 405.2401(b).

~~(25)(19)~~ "Other ambulatory services" is defined by 42 C.F.R. 440.20(c).

~~(25)(23)(26)~~ [(40)] "Part-time nursing care" is defined by 42 C.F.R. 405.2401(b).

~~(26)(24)(27)~~ "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

~~(28)(14)~~ "Physician" is defined by KRS 205.510(11) and 42 C.F.R. 405.2401(b).

~~(27)(25)(29)~~ [(42)] "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

~~(28)(26)(30)~~ "Qualified mental health professional" is defined by KRS 202A.011(12).

~~(34)~~ "Recipient" is defined by KRS 205.8451(9).

~~(29)(27)(32)~~ [(43)] "Rural health clinic" or "RHC" is defined by 42 C.F.R. 405.2401(b).

~~(30)(28)(33)~~ [(44)] "State plan" is defined by 42 C.F.R. 400.203.

~~(31)(29)(34)~~ [(45)] "Visiting nurse services" is defined by 42 C.F.R. 405.2401(b).

~~(35)~~ "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.]

Section 2. Covered Services Other Than Behavioral Health Services. The department shall cover the following medically necessary rural health clinic services furnished by an RHC that has been certified in accordance with 42 C.F.R. 491.1 through 491.11:

(1) Services pursuant to 42 U.S.C. 1395x(aa);

(2) Services provided by a physician if the physician:

(a) Complies with the physician responsibility requirements established by 42 C.F.R. 491.8(b); and

(b) 1. Performs the services in an RHC; or

2. Is compensated under an agreement with an RHC for providing services furnished to a Medicaid eligible RHC patient in a location other than the RHC;

(3) Services provided by a physician assistant or[,] advanced practice registered nurse[practitioner][, or nurse-midwife] who is employed by or receives compensation from the RHC if the services:

(a) Are furnished by a member of the RHC's staff who complies with the responsibility requirements established by 42 C.F.R. 491.8(c);

(b) Are furnished under the medical supervision of a physician **except for services furnished by an APRN as these services shall not be required to be furnished under the medical supervision of a physician;**

(c) Are furnished in accordance with a medical order for the care and treatment of a patient as prepared by a physician **or an advanced practice registered nurse;**

(d) Are within the provider's legally-authorized scope of practice; and

(e) Would be covered if furnished by a physician;

(4) Services or supplies furnished as **incidental[an incident]** to services provided by a physician, physician assistant, **or** advanced practice registered nurse[practitioner][, or nurse

**midwife]** if the service or supply meets the criteria established in 42 C.F.R. 405.2413 or 42 C.F.R. 405.2415;

(5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or biologicals, if:

(a) The RHC is located in an area where a determination has been made that there is a shortage of home health agencies pursuant to 42 C.F.R. 405.2417;

(b) The services are provided by a registered nurse **or[,] licensed practical nurse[, or a licensed vocational nurse]** who is employed by or compensated for the services by the RHC; and

(c) The services are furnished to a homebound recipient under a written plan of treatment that is:

1. Established and reviewed at least every sixty (60) days by a supervising physician of the RHC; or

2. Established by a physician, physician assistant, **or** advanced practice registered nurse[practitioner][, **or nurse midwife]** and reviewed and approved at least every sixty (60) days by a supervising physician of the RHC; **or**

(6) [Behavioral health services provided by a clinical psychologist, licensed clinical social worker, or advanced registered nurse-practitioner if the services are:

(a) Provided by an individual who is employed by or furnishes services under contract to the RHC; and

(b) Within the provider's legally-authorized scope of practice;

(7) Services or supplies incident to a clinical psychologist's or licensed clinical social worker's behavioral health services if the service or supply meets the criteria established in 42 C.F.R. 405.2452; and

(8) Other ambulatory services as established in the state plan.

Section 3. Behavioral Health Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for:

(a) A mental health disorder;

(b) A substance use disorder; **or**

(c) Co-occurring mental health and substance use disorders.

(2) The department shall cover, and a rural health clinic may provide, the following services:

(a) Behavioral health services provided by a **licensed[clinical] psychologist, licensed clinical social worker, or advanced practice registered nurse** within the provider's legally authorized scope of service; **or**

(b) Services or supplies incidental to a **licensed[clinical] psychologist's or licensed clinical social worker's behavioral health services** if the service or supply meets the criteria established in **[Title] 42 C.F.R. 405.2452.**

(3) In addition to the services referenced in subsection (2) of this section, the following behavioral health services provided by a rural health clinic shall be covered under this administrative regulation in accordance with the corresponding following requirements:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist **[if the licensed psychologist is the billing provider for the service];**

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor **[if the licensed professional clinical counselor is the billing provider for the service];**

11. A certified social worker working under the supervision of a licensed clinical social worker **[if the licensed clinical social worker is the billing provider for the service];**

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist **[if the licensed marriage and family therapist is the billing provider**





2. A licensed professional clinical counselor;  
3. A licensed clinical social worker;  
4. A licensed marriage and family therapist;  
5. A physician;  
6. A psychiatrist;  
7. An advanced practice registered nurse;  
8. A licensed psychological practitioner;  
9. A licensed psychological associate working under the supervision of a licensed psychologist~~[if the licensed psychologist is the billing provider for the service]~~;  
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor~~[if the licensed professional clinical counselor is the billing provider for the service]~~;  
11. A certified social worker working under the supervision of a licensed clinical social worker~~[if the licensed clinical social worker is the billing provider for the service]~~;  
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist~~[if the licensed marriage and family therapist is the billing provider for the service]~~; ~~[or]~~  
13. A physician assistant working under the supervision of a physician~~[if the physician is the billing provider for the service]~~;  
14. A licensed professional art therapist; ~~or~~  
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;  
(h) Group outpatient therapy provided by:  
1. A licensed psychologist;  
2. A licensed professional clinical counselor;  
3. A licensed clinical social worker;  
4. A licensed marriage and family therapist;  
5. A physician;  
6. A psychiatrist;  
7. An advanced practice registered nurse;  
8. A licensed psychological practitioner;  
9. A licensed psychological associate working under the supervision of a licensed psychologist~~[if the licensed psychologist is the billing provider for the service]~~;  
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor~~[if the licensed professional clinical counselor is the billing provider for the service]~~;  
11. A certified social worker working under the supervision of a licensed clinical social worker~~[if the licensed clinical social worker is the billing provider for the service]~~;  
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist~~[if the licensed marriage and family therapist is the billing provider for the service]~~; ~~[or]~~  
13. A physician assistant working under the supervision of a physician~~[if the physician is the billing provider for the service]~~;  
14. A licensed professional art therapist;  
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;  
16. A licensed behavior analyst; ~~or~~  
17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;  
(i) Collateral outpatient therapy provided by:  
1. A licensed psychologist;  
2. A licensed professional clinical counselor;  
3. A licensed clinical social worker;  
4. A licensed marriage and family therapist;  
5. A physician;  
6. A psychiatrist;  
7. An advanced practice registered nurse;  
8. A licensed psychological practitioner;  
9. A licensed psychological associate working under the supervision of a licensed psychologist~~[if the licensed psychologist is the billing provider for the service]~~;  
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor~~[if the~~

licensed professional clinical counselor is the billing provider for the service];

11. A certified social worker working under the supervision of a licensed clinical social worker [if the licensed clinical social worker is the billing provider for the service].
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist [if the licensed marriage and family therapist is the billing provider for the service]. [or]
13. A physician assistant working under the supervision of a physician [if the physician is the billing provider for the service].
14. A licensed professional art therapist;
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
16. A licensed behavior analyst; or
17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;
- (i) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:
1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist [if the licensed psychologist is the billing provider for the service];
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor [if the licensed professional clinical counselor is the billing provider for the service];
11. A certified social worker working under the supervision of a licensed clinical social worker [if the licensed clinical social worker is the billing provider for the service];
12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist [if the licensed marriage and family therapist is the billing provider for the service]. [or]
13. A physician assistant working under the supervision of a physician [if the physician is the billing provider for the service].
14. A licensed professional art therapist; or
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;
- (k) [Medication assisted treatment for a substance use disorder provided by:
1. A physician; [or]
  2. A psychiatrist; or
  3. An advanced practice registered nurse;
- (H) Day treatment provided by [a team of at least two (2) of the following]:
1. A licensed psychologist;
  2. A licensed professional clinical counselor;
  3. A licensed clinical social worker;
  4. A licensed marriage and family therapist;
  5. A physician;
  6. A psychiatrist;
  7. An advanced practice registered nurse;
  8. A licensed psychological practitioner;
  9. A licensed psychological associate working under the supervision of a licensed psychologist [if the licensed psychologist is the billing provider for the service];
10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor [if the licensed professional clinical counselor is the billing provider for the service];
11. A certified social worker working under the supervision of a licensed clinical social worker [if the licensed clinical social worker is the billing provider for the service];

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist~~[if the licensed marriage and family therapist is the billing provider for the service]~~~~;~~~~[or]~~

13. A physician assistant working under the supervision of a physician~~[if the physician is the billing provider for the service]~~~~;~~

14. A licensed professional art therapist; or

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;]

(l)(m) Comprehensive community support services provided by a team of at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist~~[if the licensed psychologist is the billing provider for the service]~~~~;~~

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor~~[if the licensed professional clinical counselor is the billing provider for the service]~~~~;~~

11. A certified social worker working under the supervision of a licensed clinical social worker~~[if the licensed clinical social worker is the billing provider for the service]~~~~;~~

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist~~[if the licensed marriage and family therapist is the billing provider for the service]~~~~;~~

13. A physician assistant working under the supervision of a physician~~[if the physician is the billing provider for the service]~~~~;~~~~[or]~~

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst;

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst; or

18. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional;

16. A youth peer support specialist working under the supervision of a mental health professional; or

17. A community support associate;

(m)(n) Peer support provided by:

1. A peer support specialist working under the supervision of a mental health professional;

2. A family peer support specialist working under the supervision of a mental health professional; or

3. A youth peer support specialist working under the supervision of a mental health professional;

(o) Mobile crisis services provided by a team of at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(p) Assertive community treatment provided by a team that includes at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

14. A peer support specialist working under the supervision of a mental health professional;

15. A family peer support specialist working under the supervision of a mental health professional; or

16. A youth peer support specialist working under the supervision of a mental health professional;

(q) Intensive outpatient program provided by a team that includes at least two (2) of the following:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist~~[if the licensed psychologist is the billing provider for the service]~~~~;~~

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor~~[if the licensed professional clinical counselor is the billing provider for the service]~~~~;~~

11. A certified social worker working under the supervision of a licensed clinical social worker ~~if the licensed clinical social worker is the billing provider for the service~~;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist ~~if the licensed marriage and family therapist is the billing provider for the service~~; ~~or~~

13. A physician assistant working under the supervision of a physician ~~if the physician is the billing provider for the service~~;

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate; or~~

~~(n)(o)(r) Residential crisis stabilization provided by a team of at least two (2) of the following:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A peer support specialist working under the supervision of a mental health professional;~~

~~15. A family peer support specialist working under the supervision of a mental health professional; or~~

~~16. A youth peer support specialist working under the supervision of a mental health professional;~~

~~(s) Residential services for a substance use disorder provided by a team of at least two (2) of the following:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;~~

~~14. A peer support specialist working under the~~

~~supervision of a mental health professional;~~

~~15. A family peer support specialist working under the supervision of a mental health professional; or~~

~~16. A youth peer support specialist working under the supervision of a mental health professional;~~

~~(t) Therapeutic rehabilitation program services provided by a team of at least two (2) of the following individuals:~~

~~1. A licensed psychologist;~~

~~2. A licensed professional clinical counselor;~~

~~3. A licensed clinical social worker;~~

~~4. A licensed marriage and family therapist;~~

~~5. A physician;~~

~~6. A psychiatrist;~~

~~7. An advanced practice registered nurse;~~

~~8. A licensed psychological practitioner;~~

~~9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~

~~12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~ ~~or~~

~~13. A physician assistant working under the supervision of a physician;~~

~~14. A licensed professional art therapist; or~~

~~15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the physician is the billing provider for the service;~~

~~14. A peer support specialist working under the supervision of a mental health professional;~~

~~15. A family peer support specialist working under the supervision of a mental health professional; or~~

~~16. A youth peer support specialist working under the supervision of a mental health professional; or~~

~~(u) Parent or family peer support provided by:~~

~~1. A peer support specialist working under the supervision of a mental health professional;~~

~~2. A family peer support specialist working under the supervision of a mental health professional; or~~

~~3. A youth peer support specialist working under the supervision of a mental health professional].~~

~~(4)(a) A screening shall:~~

~~1. Be the determination of the likelihood that an individual has a mental health disorder, a substance use disorder, or co-occurring disorders;~~

~~2. Not establish the presence or specific type of disorder; and~~

~~3. Establish the need for an in-depth assessment.~~

~~(b) An assessment shall:~~

~~1. Include gathering information and engaging in a process with the individual that enables the provider to:~~

~~a. Establish the presence or absence of a mental health disorder, or substance use disorder, or co-occurring disorders;~~

~~b. Determine the individual's readiness for change;~~

~~c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and~~

~~d. Engage the individual in developing an appropriate treatment relationship;~~

~~2. Establish or rule out the existence of a clinical/clinic disorder or service need;~~

~~3. Include working with the individual to develop a treatment and service plan; and~~

~~4. Not include a psychological or psychiatric evaluation or assessment.~~

~~(c) Psychological testing shall include:~~

~~1. A psychodiagnostic assessment of personality.~~

psychopathology, emotionality, or intellectual disabilities; and

2. Interpretation and a written report of testing results.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for an individual with a behavioral health disorder;

3. Shall be provided:

a. ~~On-site at a rural health clinic~~~~[In an office, home, or community setting where the individual is experiencing the crisis]~~;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include verbal de-escalation, risk assessment, or cognitive therapy; and

5. Shall be followed by a referral to non-crisis services if applicable.

(e)1. Service planning shall consist of assisting a recipient in creating an individualized plan for services needed **for maximum reduction of an intellectual disability and to restore the individual to his or her best possible functional level**~~[to maintain functional stability or return to stability as soon as possible in order to avoid out-of-home care]~~.

2. A service plan:

a. Shall be directed by the recipient; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance **use disorder, mental health disorder, or co-occurring related disorders**~~[related disorder]~~;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving **functionality**~~[functioning]~~; and

4. Not exceed three (3) hours per day.

(g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals, including multiple members from one (1) family, who participate in the session.

(h)1. Group outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance **use disorder, mental health disorder, or co-occurring related disorders**~~[disorder]~~;

b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

c. Be provided to a recipient in a group setting;

(i) Of nonrelated individuals; and

(ii) Not to exceed **twelve (12)**~~[eight (8)]~~ individuals in size;

d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

f. Not exceed three (3) hours per day.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(i) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice; and

c. Referring a recipient to:

(i) Therapy; or

(ii) Other additional services to address substance use if the recipient is determined to need other additional services.

(k) ~~[Medication-assisted treatment for a substance use disorder]~~:

**1. Shall include:**

**a. Any opioid addiction treatment that includes a United States Food and Drug Administration-approved medication for the detoxification or maintenance treatment of opioid addiction along with counseling or other supports;**

**b. Comprehensive maintenance;**

**c. Medical maintenance;**

**d. Interim maintenance;**

**e. Detoxification; or**

**f. Medically supervised withdrawal;**

**2. May be provided in:**

**a. An opioid treatment program;**

**b. A medication unit affiliated with an opioid treatment program;**

**c. A physician's office except for methadone; or**

**d. Other community setting; and**

**3. Shall increase the likelihood for cessation of illicit opioid use or prescription opioid abuse.**

(l)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. An emotional disability or neurobiological or substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment services shall:

a. Consist of an organized, behavioral health program of

treatment and rehabilitative services (substance use disorder, mental health **disorder**, or co-occurring mental health and substance use disorders);

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;

c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skill training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's **individualized[individual]** educational plan if the recipient has an **individualized[individual]** educational plan;

(iv) Under the supervision of a licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. To provide day treatment services, an RHC shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with subsection **(3)(k)(3)(i)** of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of **[residential crisis stabilization]** services as stated in **subparagraphs 1 and 2[subparagraph 1]** of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs;

f. The capacity to document and maintain individual case records; and

g. Knowledge of substance use disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

**(l)(m)1.** Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in community-integrated housing;

b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan;

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; or

(ii) Teaching parenting skills, teaching community resource access and utilization, teaching emotional regulation skills, teaching crisis coping skills, teaching how to shop, teaching about transportation, teaching financial management, or developing and enhancing interpersonal skills; and

d. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

2. To provide comprehensive community support services, an RHC shall have:

a. The capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection **(3)(l)(3)(m)** of this section and to coordinate the provision of services among team members;

b. The capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;

c. Demonstrated experience in serving individuals with behavioral health disorders;

d. The administrative capacity to ensure quality of services;

e. A financial management system that provides documentation of services and costs; and

f. The capacity to document and maintain individual case records.

**(m)(n)1.** **[Peer support services shall:**

**a. Be social and emotional support that is provided by an individual who is experiencing a mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;**

**b. Be an evidence-based practice;**

**c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;**

**d. Be provided by a self-identified consumer or parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health and substance use disorders services who has been trained and certified in accordance with 908 KAR 2:220;**

**e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and**

**f. Be identified in each recipient's treatment plan.**

**2. To provide peer support services, an RHC shall:**

**a. Have demonstrated the capacity to provide the core elements of peer support services for the behavioral health population being served including the age range of the population being served;**

**b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220;**

**c. Use a qualified mental health professional to supervise peer support specialists;**

**d. Have the capacity to employ staff authorized to provide peer support in accordance with subsection (3)(n) of this section and to coordinate the provision of services among team members;**

**e. Have the capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;**

**f. Have demonstrated experience in serving individuals with behavioral health disorders;**

**g. Have the administrative capacity to ensure quality of services;**

**h. Have a financial management system that provides documentation of services and costs; and**

**i. Have the capacity to document and maintain individual case records.**

**(o)1. Mobile crisis services shall:**

**a. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year; and**

**b. Be a crisis response in a home or community setting to provide an immediate evaluation, triage, and access to acute substance use disorder services including treatment and supports to:**

**(i) Reduce symptoms or harm; or**

**(ii) Safely transition an individual in an acute crisis to appropriate crisis stabilization and detoxification supports or services.**

**2. To provide mobile crisis services, an RHC shall have:**

**a. The capacity to employ staff authorized to provide mobile crisis services in accordance with subsection (3)(o) of this section and to coordinate the provision of services among team members;**

**b. The capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on**

~~a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;~~

~~c. Access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;~~

~~d. Demonstrated experience in serving individuals with behavioral health disorders;~~

~~e. The administrative capacity to ensure quality of services;~~

~~f. A financial management system that provides documentation of services and costs;~~

~~g. The capacity to document and maintain individual case records; and~~

~~h. Knowledge of substance use disorders.~~

~~(p)1. Assertive community treatment shall:~~

~~a. Be an evidence-based psychiatric rehabilitation practice which provides a comprehensive approach to service delivery for individuals with a serious mental illness;~~

~~b. Use a multidisciplinary team of at least two (2) of the following professionals:~~

~~(i) A psychiatrist;~~

~~(ii) A nurse;~~

~~(iii) A case manager; or~~

~~(iv) A therapist; and~~

~~c. Include:~~

~~(i) Assessment;~~

~~(ii) Treatment planning;~~

~~(iii) Case management;~~

~~(iv) Psychiatric services;~~

~~(v) Medication management administration;~~

~~(vi) Individual outpatient therapy;~~

~~(vii) Family outpatient therapy;~~

~~(viii) Group outpatient therapy;~~

~~(ix) Mobile crisis intervention;~~

~~(x) Mental health consultation; or~~

~~(xi) Family support and basic living skills.~~

~~2. To provide assertive community treatment services, an RHC shall:~~

~~a. Employ one (1) or more teams;~~

~~(i) Led by a qualified mental health professional; and~~

~~(ii) Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, a qualified mental health professional, a case manager, or a co-occurring disorders specialist;~~

~~b. Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;~~

~~c. Have the capacity to employ staff authorized to provide assertive community treatment services in accordance with subsection (3)(p) of this section and to coordinate the provision of services among team members;~~

~~d. The capacity to provide the full range of assertive community treatment services as stated in this paragraph;~~

~~e. Demonstrated experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community;~~

~~f. The administrative capacity to ensure quality of services;~~

~~g. A financial management system that provides documentation of services and costs; and~~

~~h. The capacity to document and maintain individual case records.~~

~~(q)1.] Intensive outpatient program services shall:~~

~~a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health disorder,~~for~~ substance use disorder, or co-occurring disorders;~~

~~b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;and~~

~~c. Be provided at least three (3) hours per day at least three (3) days per week; and~~

~~d. Include:~~

~~(i) Individual outpatient therapy, group outpatient therapy, or~~

~~family outpatient therapy unless contraindicated;~~

~~(ii) Crisis intervention; or~~

~~(iii) Psycho-education.~~

~~2. During psycho-education, the recipient or family member shall be:~~

~~a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and~~

~~b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.~~

~~3. An intensive outpatient program treatment plan shall:~~

~~a. Be individualized; and~~

~~b. Focus on stabilization and transition to a lesser level of care.~~

~~4. To provide intensive outpatient program services, an RHC shall have:~~

~~a. Access to a board-certified or board-eligible psychiatrist for consultation;~~

~~b. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication prescribing and monitoring~~[management]~~;~~

~~c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10)~~fifteen (15)]~~ to one (1)~~four (4) recipients to one (1) staff]~~;~~

~~d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment~~[recovery]~~ principles;~~

~~e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with subsection (3)(m)~~[(3)(g)]~~ of this section and to coordinate the provision of services among team members;~~

~~f. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;~~

~~g. Demonstrated experience in serving individuals with behavioral health disorders;~~

~~h. The administrative capacity to ensure quality of services;~~

~~i. A financial management system that provides documentation of services and costs; and~~

~~j. The capacity to document and maintain individual case records.~~

~~(n)~~[(o)]~~1. Residential crisis stabilization services shall be provided in a crisis stabilization unit.~~

~~2. A crisis stabilization unit shall:~~

~~a. Be a community-based, residential program that offers an array of services including:~~

~~(i) Screening;~~

~~(ii) Assessment;~~

~~(iii) Treatment planning;~~

~~(iv) Individual outpatient therapy;~~

~~(v) Family outpatient therapy;~~

~~(vi) Group outpatient therapy; and~~

~~(vii) Psychiatric services;~~

~~b. Provide services in order to:~~

~~(i) Stabilize a crisis and divert an individual from a higher level of care;~~

~~(ii) Stabilize an individual and provide treatment for acute withdrawal, if applicable; and~~

~~(iii) Re-integrate the individual into the individual's community or other appropriate setting in a timely fashion;~~

~~c. Not be part of a hospital;~~

~~d. Be used when an individual:~~

~~(i) Is experiencing a behavioral health emergency that cannot be safely accommodated within the individual's community; and~~

~~(ii) Needs overnight care that is not hospitalization;~~

~~e. Not contain more than sixteen (16) beds; and~~

~~f. Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate;~~

~~3. Residential crisis stabilization shall not include:~~

~~a. Room and board;~~

~~b. Educational services;~~

~~c. Vocational services;~~

~~d. Job training services;~~

~~e. Habilitation services;~~

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;  
g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;  
h. Recreational activities;  
i. Social activities; or  
j. Services required to be covered elsewhere in the state plan.  
4. To provide residential crisis stabilization services, an RHC shall have:  
a. The capacity to employ staff authorized to provide residential crisis stabilization services in accordance with subsection (3)(r) of this section and to coordinate the provision of services among team members;  
b. The capacity to provide the full range of residential crisis stabilization services as stated in this paragraph and on a twenty-four (24) hour a day, seven (7) day a week, every day of the year basis;  
c. Access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;  
d. Demonstrated experience in serving individuals with behavioral health disorders;  
e. The administrative capacity to ensure the quality of services;  
f. A financial management system that provides documentation of services and costs;  
g. The capacity to document and maintain individual case records; and  
h. Knowledge of substance use disorders.  
(s)1. Residential services for substance use disorders shall:  
a. Be provided in twenty-four (24) hour per day units;  
b. Be short or long term to provide intensive treatment and skills building in a structured and supportive environment;  
c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;  
d. Be provided in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;  
e. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;  
f. Last less than thirty (30) days;  
g. Be provided under the medical direction of a physician;  
h. Provide continuous nursing services;  
i. Be based on individual need and may include:  
(i) Screening;  
(ii) Assessment;  
(iii) Service planning;  
(iv) Individual outpatient therapy;  
(v) Group outpatient therapy; or  
(vi) Family outpatient therapy; and  
j. Be provided in accordance with 908 KAR 1:370.  
2. A residential service for substance use disorder building shall have more than eight (8) but less than seventeen (17) beds.  
3. A short-term length-of-stay for residential services for a substance use disorder shall:  
a. Be between fourteen (14) and twenty-eight (28) days in duration;  
b. Include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:  
(i) Stabilize and maintain a person's substance use disorder; and  
(ii) Help the recipient develop and apply recovery skills; and  
c. May include the services listed in subparagraph 1.i. of this paragraph.  
4. A long-term length-of-stay for residential services for a

substance use disorder shall:  
a. Be between twenty-eight (28) days and ninety (90) days in duration;  
b. Include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:  
(i) Stabilize and maintain a person's substance use disorder; and  
(ii) Help the recipient develop and apply recovery skills; and  
c. May include the services listed in subparagraph 1.i. of this paragraph.  
5. Residential services for a substance use disorder shall not include:  
a. Room and board;  
b. Educational services;  
c. Vocational services;  
d. Job training services;  
e. Habilitation services;  
f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;  
g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;  
h. Recreational activities;  
i. Social activities; or  
j. Services required to be covered elsewhere in the state plan.  
6. The physical structure in which residential services for a substance use disorder are provided shall not:  
a. Contain more than sixteen (16) beds; and  
b. Be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.  
7. To provide residential services for a substance use disorder, an RHC shall:  
a. Have the capacity to employ staff authorized to provide residential services for a substance use disorder in accordance with subsection (3)(s) of this section and to coordinate the provision of services among team members;  
b. Have the capacity to provide the full range of residential services for a substance use disorder as stated in this paragraph;  
c. Have demonstrated experience in serving individuals with behavioral health disorders;  
d. Have the administrative capacity to ensure quality of services;  
e. Have a financial management system that provides documentation of services and costs;  
f. Have the capacity to document and maintain individual case records; and  
g. Be licensed as a nonmedical and nonhospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.  
(t)1.] Therapeutic rehabilitation program services shall:  
a. Occur at the provider's site or in the community;  
b. Be provided to an adult with a severe mental illness or to a child (under the age of twenty-one (21) years) *who has a serious emotional disability*;  
c. Be designed to *maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level/enhance skills and offer experiential learning opportunities that are aligned with treatment goals and recovery principles*; and  
d. [c.] Not be a residential program; and  
d. Be a day program based on the Fountain House clubhouse model of psychosocial rehabilitation for individuals with a serious mental illness].  
2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.  
3. A therapeutic rehabilitation program shall:  
a. Be delivered using a variety of psychiatric rehabilitation techniques;  
b. Focus on:

- (i) Improving daily living skills;
- (ii) Self-monitoring of symptoms and side effects;
- (iii) Emotional regulation skills;
- (iv) Crisis coping skill; and
- (v) Interpersonal skills; and
- c. Be delivered individually or in a group.

4. To provide therapeutic rehabilitation program services, an RHC shall:

- a. Have the capacity to employ staff authorized to provide therapeutic rehabilitation program services in accordance with subsection (3)(n)/(3)(t) of this section and to coordinate the provision of services among team members;
- b. Have the capacity to provide the full range of therapeutic rehabilitation program services as stated in this paragraph;
- c. Have demonstrated experience in serving individuals with mental health disorders;
- d. Have the administrative capacity to ensure quality of services;
- e. Have a financial management system that provides documentation of services and costs; and
- f. Have the capacity to document and maintain individual case records.

[(u)1. Parent or family peer support services shall:

- a. Be emotional support that is provided by a parent or family member of a child who is experiencing a mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member with a child sharing a similar mental health disorder, a substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;
- b. Be an evidence-based practice;
- c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;
- d. Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health and substance use disorders services who has been trained and certified in accordance with 908 KAR 2:230;
- e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and
- f. Be identified in each recipient's treatment plan.

2. To provide parent or family peer support services, a provider shall:

- a. Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;
- b. Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230;
- c. Use a qualified mental health professional to supervise family peer support specialists;
- d. Have the capacity to employ staff authorized to provide parent or family peer support in accordance with subsection (2)(u) of this section and to coordinate the provision of services among team members;
- e. Have the capacity to provide the full range of comprehensive community support services as stated in subparagraph 1 of this paragraph;
- f. Have demonstrated experience in serving individuals with behavioral health disorders;
- g. Have the administrative capacity to ensure quality of services;
- h. Have a financial management system that provides documentation of services and costs; and
- i. Have the capacity to document and maintain individual case records;]

(5)(a) The [following] requirements established in 908 KAR 1:370 shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health and substance use disorders/;

1. The licensing requirements established in 908 KAR 1:370;

2. The physical plant requirements established in 908 KAR 1:370;

3. The organization and administration requirements established in 908 KAR 1:370;

4. The personnel policy requirements established in 908 KAR 1:370;

5. The quality assurance requirements established in 908 KAR 1:370;

6. The clinical staff requirements established in 908 KAR 1:370;

7. The program operational requirements established in 908 KAR 1:370; and

8. The outpatient program requirements established in 908 KAR 1:370.]

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(6) The extent and type of assessment performed [at the time of a screening] shall depend upon the problem of the individual seeking or being referred for services.

(7) A diagnosis or clinical[clinic] impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(8)(a) Direct contact between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(9) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(10) A service shall be:

(a) Stated in the[a] recipient's treatment plan;

(b) Provided in accordance with the[a] recipient's treatment plan;

(c) Provided on a regularly scheduled basis except for a screening or assessment; and

(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient.

(11) The following services or activities shall not be covered under this administrative regulation:

(a) A behavioral health service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of face-to-face;

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(12)[(a) A consultation by one (1) provider or professional with another shall not be covered except as specified in Section 3(4)(i) of this administrative regulation.



~~(b)~~ A third party contract shall not be covered under this administrative regulation.

Section ~~4.5.]~~ Provision of Services. An RHC shall comply with the service provision requirements established by 42 C.F.R. 491.9.

Section ~~5.6.]4.]~~ Immunizations. An RHC shall provide, upon request from a recipient, the following covered immunizations:

- (1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);
- (2) Measles, mumps, and rubella virus vaccine live (MMR);
- (3) Poliovirus vaccine, live, oral (any type(s)) (OPV); or
- (4) Hemophilus B conjugate vaccine (HBCV).

Section ~~6.7.]~~ Medical Necessity Requirement. To be covered pursuant to this administrative regulation, a service shall be:

- (1) Medically necessary for the recipient; and
- (2) Provided to a recipient.

Section ~~7.8.]~~ Noncovered Services. (1) The following services shall not be covered as rural health clinic services:

(a) Services provided in a hospital as defined in 42 U.S.C. 1395x(e);

(b) Institutional services;

(c) Housekeeping, babysitting, or other similar homemaker services;

(d) Services which are not provided in accordance with restrictions imposed by law or administrative regulation;

~~(e) A behavioral health service provided to:~~

~~1. A resident of:~~

~~a. A nursing facility; or~~

~~b. An intermediate care facility for individuals with an intellectual disability;~~

~~2. An inmate of a federal, local, or state:~~

~~a. Jail;~~

~~b. Detention center; or~~

~~c. Prison; or~~

~~3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;~~

~~(f) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;~~

~~(g) A consultation or educational service provided to a recipient or to others;~~

~~(h) Collateral outpatient therapy for an individual aged twenty-one (21) years or older;~~

~~(i) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of face-to-face;~~

~~(j) Travel time;~~

~~(k) A field trip;~~

~~(l) A recreational activity;~~

~~(m) A social activity; or~~

~~(n) A physical exercise activity group].~~

~~(2)(a) A consultation by one (1) provider or professional with another shall not be covered except as specified in Section 2(2)(k) of this administrative regulation.~~

~~(b)~~ A third party contract shall not be covered under this administrative regulation.

Section ~~8.9.]~~ No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a service from an independent behavioral health service provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a rural health clinic.

Section ~~9.10.]~~ Protection, Security and Records Maintenance Requirements for All Services. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3)(a) A provider shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. If requested, be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section ~~10.11.]~~ Documentation and Records Maintenance Requirements for Behavioral Health Services. (1) The requirements in this section shall apply to health records associated with behavioral health services.

(2) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance or Medicaid information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

k. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and  
(b) Be:  
1. Maintained in an organized central file;  
2. Furnished to the Cabinet for Health and Family Services upon request;  
3. Made available for inspection and copying by Cabinet for Health and Family Services' personnel;  
4. Readily accessible; and  
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient.  
(3) Documentation of a screening shall include:  
(a) Information relative to the individual's stated request for services; and  
(b) Other stated personal or health concerns if other concerns are stated.  
(4)(a) A provider's notes regarding a recipient shall:  
1. Be made within forty-eight (48) hours of each service visit; and  
2. Describe the:  
a. Recipient's symptoms or behavior, reaction to treatment, and attitude;  
b. Therapist's intervention;  
c. Changes in the treatment plan if changes are made; and  
d. Need for continued treatment if continued treatment is needed.  
(b)1. Any edit to notes shall:  
a. Clearly display the changes; and  
b. Be initialed and dated.  
2. Notes shall not be erased or illegibly marked out.  
(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional providing the service.  
2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the practitioner working under supervision concerning the:  
a. Case; and  
b. Supervising professional's evaluation of the services being provided to the recipient.  
(5) Immediately following a screening of a recipient, the provider shall perform a disposition related to:  
(a) An appropriate diagnosis;  
(b) A referral for further consultation and disposition, if applicable; and  
(c)1. Termination of services and referral to an outside source for further services; or  
2. Termination of services without a referral to further services.  
(6)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.  
(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.  
(7)(a) Notes regarding services to a recipient shall:  
1. Be organized in chronological order;  
2. Dated;  
3. Titled to indicate the service rendered;  
4. State a starting and ending time for the service; and  
5. Be recorded and signed by the rendering provider and include the professional title (for example, licensed clinical social worker) of the provider.  
(b) Initials, typed signatures, or stamped signatures shall not be accepted.  
(c) Telephone contacts, family collateral contacts not covered/coverable under this administrative regulation, or other nonreimbursable contacts shall:  
1. Be recorded in the notes; and  
2. Not be reimbursable.  
(8)(a) A termination summary shall:  
1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and  
2. Contain a summary of the significant findings and events during the course of treatment including the:  
a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's

treatment plan:  
b. Final diagnosis of clinical impression; and  
c. Individual's condition upon termination and disposition.  
(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.  
(9) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.  
(10) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient.  
(11)(a) If a provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of the provider, the health records of the provider shall:  
1. Remain the property of the provider; and  
2. Be subject to the retention requirements established in Section 9(2) of this administrative regulation/subsection (13) of this section].  
(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

Section ~~11.[12.]~~ Medicaid Program Participation Requirements. (1)(a) A participating RHC shall be currently:

1. Enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

2. Except as established in paragraph (b) of this subsection, participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the ~~fee-for-service~~ Medicaid Program[ ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~].

(2)(a) To be initially enrolled with the department, an RHC shall:

1. Enroll in accordance with 907 KAR 1:672; and

2. Submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an RHC.

(b) To remain enrolled and participating in the Kentucky Medicaid Program, an RHC shall:

1. Comply with the enrollment requirements established in 907 KAR 1:672;

2. Comply with the participation requirements established in 907 KAR 1:671; and

3. Annually submit proof of its certification by the United States Department of Health and Human Services, Health Resources and Services Administration as an RHC to the department.

(3) An RHC that has been terminated from federal participation shall be terminated from Kentucky Medicaid Program participation.

(4) A participating RHC and its staff shall comply with all applicable federal laws and regulations, state laws and administrative regulations, and local laws and regulations regarding the administration and operation of an RHC.

(5)(a) If an RHC receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section ~~12.[13.]~~ Third Party Liability. A provider shall comply with KRS 205.622.

Section 13.[14.] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 14.[15.] Auditing Authority. The department shall have the authority to audit any/:

(1) claim,;

(2) medical record,; or

(3) documentation associated with any claim or medical record.

Section 15.[16.] Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 16.[17.] Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 11, 2014

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## CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(As Amended at ARRS, May 13, 2014)

### 907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.21, 447.50, 447.52, 447.53, 447.54, 447.59, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj, **2014 Ky. Acts ch. 117, Part I.G.3.b.(10)**

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.82[447.51, 447.53, 447.54, 447.55, 447.57], 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments[or other similar charges] for Medicaid recipients.[KRS 205.6485(1)(c) requires the cabinet to establish, by administrative regulation, premiums for families with children in the Kentucky Children's Health Insurance Program. 42 U.S.C. 1396r-6(b)(5) allows for a monthly premium in the second six (6) months of transitional medical assistance.] This administrative regulation establishes the provisions relating to Medicaid Program[imposing and collecting] copayments[, coinsurance and premiums from certain recipients].

Section 1. Definitions. (1) **"Community spouse" means the individual who is married to an institutionalized spouse and who:**

**(a) Remains at home in the community; and**

**(b) Is not:**

**1. Living in a medical institution;**

**2. Living in a nursing facility; or**

**3. Participating in a 1915(c) home and community based services waiver program.**

**(2) "Coinsurance" means a percentage of the cost of a Medicaid benefit that a recipient is required to pay.**

**(2) "Comprehensive choices" means a benefit plan for an individual who:**

**(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;**

**(b) Receives services through either:**

**1. A nursing facility in accordance with 907 KAR 1:022;**

**2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;**

**3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or**

**4. The Model Waiver II Program in accordance with 907 KAR 1:595; and**

**(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.**

**(3) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.**

**(3) [(2)] (4) "Department" means the Department for Medicaid Services or its designee.**

**(4) "Dependent child" means a couple's child, including a child gained through adoption, who:**

**(a) Lives with the community spouse; and**

**(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.**

**(5) [(3)] "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.**

**(6) [(4)] (6) "Drug" means a covered drug provided in accordance with 907 KAR 1:019 for which the Department for Medicaid Services provides reimbursement.**

**(7) [(5)] "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.**

**(8) [(6)] "Family choices" means a benefit plan for an individual who:**

**(a) Is covered pursuant to**

**1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;**

**2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of Title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);**

**3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);**

**4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);**

**5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or**

6. 42 C.F.R. 457.310; and

(b) Has a designated package code of 2, 3, 4, or 5.

(7) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

~~(9)(7)(8)~~ "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive K-TAP benefits and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP benefits and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP benefits and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(h) Pregnant women; or

(i) Medicaid works individuals.

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

~~(10)(8)(9)~~ "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

~~(11)(9)~~ "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

~~(12)(10)(11)~~ "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(12) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

~~(13)(14)(13)~~ "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.53.

~~(14)(12)(14)~~ "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

~~(15)(13)(15)~~ "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with an intellectual disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with an intellectual disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

~~(16)~~ "Preferred brand name[brand-name] drug" means a brand name[brand-name] drug;

(a) For which no generic equivalent exists which has a more favorable cost to the department; and

(b) Which prescribers are encouraged to prescribe, if medically appropriate.

~~(16)(14)~~ "Preventive service" means:

~~(a) 1. All of the preventive services assigned a[For a child:~~

~~1. An immunization recommended by the Centers for Disease Control; or~~

~~2. A preventive service;~~

~~a. Rated grade of A or B by the United States Preventive Services Task Force (USPSTF); or~~

~~2. All approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;~~

~~(b) Preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program Project[and~~

~~b. Recommended for children and adolescents by the USPSTF]; or~~

~~(c) Preventive services for women recommended by the Institute of Medicine[(b) For an adult, a preventive service;~~

~~1. Rated grade A or B by the United States Preventive Services Task Force (USPSTF); and~~

~~2. Recommended for adults by the USPSTF].~~

~~(17)(15)(17)~~ "Premium" means an amount paid periodically to purchase health care benefits.

~~(18)~~ "Recipient" is defined in KRS 205.8451(9)~~and applies to an individual who has been determined eligible to receive benefits under the state's Title XIX or Title XXI program in accordance with Title 907 KAR~~[907 KAR Chapters 1 through 4].

~~(18)(16)(19)~~ "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits[for up to twelve (12) months for families who lose Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earning disregards] in accordance with 907 KAR 20:005, Section 5(5).

Section 2.[Comprehensive—Choices] Copayments[and Coinsurance]. (1) The following table shall establish[establishes] the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) of this administrative regulation; and

(b)[Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the comprehensive choices plan shall pay the copayment or coinsurance amount established in this table, with the] Corresponding provider reimbursement deductions.

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Benefit	Copayment[or Coinsurance] Amount	<del>[Amount of Copayment][or Coinsurance][Deducted from Provider Reimbursement]</del>
Acute inpatient hospital admission	<del>\$50[\$10]</del> <b>[copayment]</b>	<b>[Full amount of the copayment]</b>
Outpatient hospital or ambulatory surgical center visit	<del>\$4[\$3]</del> <b>[copayment]</b>	<b>[Full amount of the copayment]</b>
Generic prescription drug <del>[or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage]</del>	<del>\$1</del> <b>[copayment]</b>	<b>[Full amount of the copayment]</b>
Preferred brand name drug <del>[for a recipient who does not have Medicare Part D drug coverage]</del>	<del>\$4[\$2]</del> <b>[copayment]</b>	<b>[Full amount of the copayment]</b>
Nonpreferred brand name drug <del>[for a recipient who does not have Medicare Part D drug coverage]</del>	<del>\$8</del> <b>[5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription]</b>	<b>[Full amount of the copayment]</b> <del>[coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription]</del>
Emergency room for a nonemergency visit	<del>\$8</del> <b>[5% coinsurance, up to a maximum of \$6]</b>	<b>[Full amount of the copayment]</b> <del>[No deduction]</del>
DMEPOS	<del>\$4</del> <b>[3% coinsurance up to a maximum of \$15 per item]</b>	<b>[Full]</b> <del>[The]</del> <b>[amount of the copayment]</b> <del>[coinsurance or, if applicable, \$15]</del>
Podiatry office visit	<del>\$3</del> <b>[\$2]</b> <b>[copayment]</b>	<b>[Full amount of the copayment]</b>
Chiropractic office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Dental office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Optometry office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
General ophthalmological office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Physician office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Office visit for <b>behavioral health care</b> <del>[by a behavioral health professional]</del>	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Office visit to a rural health clinic	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Office visit to a federally qualified health center or a <b>federally qualified health center look-alike</b>	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Office visit to a primary care center	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Physical therapy office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Occupational therapy office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
<b>Speech-language pathology services</b> <del>[therapy]</del> office visit	<del>\$3</del>	<b>[Full amount of the copayment]</b>
Laboratory, diagnostic, or radiological service	<del>\$3</del>	<b>[Full amount of the copayment]</b>

(2) **The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.**

**(3)** A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five percent of a family's income for a quarter. (4) If a service or benefit is not listed in the comprehensive choices cost-sharing grid,

the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the comprehensive choices benefit plan.]

Section 3. [Family Choices Copayments and Coinsurance. (1)(a) Except for an individual excluded in accordance with Section 6(1) of this administrative regulation, only KCHIP children shall be family choices individuals subject to copayments or coinsurance.

(b) An individual referenced in paragraph (a) of this subsection shall pay the copayment or coinsurance amounts established in the following table, along with the corresponding provider reimbursement deductions.

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Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Allergy service or testing (no copayment exists for injections)	\$2 copayment	Full amount of copayment
Generic prescription drug or atypical anti-psychotic drug if no generic equivalent exists	\$1 copayment	Full amount of copayment
Preferred brand name drug	\$2 copayment	Full amount of copayment
Nonpreferred brand name drug	\$3 copayment	Full amount of the copayment
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction

(2) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the family choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service

or benefit for an individual in the family choices benefit plan.

Section 4. Global Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the global choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance	Copayment or Coinsurance Amount Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$50 copayment	Full amount of copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of copayment
Laboratory, diagnostic or radiology service	\$3 copayment	Full amount of copayment
Physician services	\$2 copayment	No deduction
Visit to a rural health clinic, a primary care center, or a federally qualified health center	\$2 copayment	Full amount of copayment
Dental office visit	\$2 copayment	No deduction
Physical therapy	\$2 copayment	Full amount of the copayment
Speech therapy	\$1 copayment	Full amount of the copayment
Chiropractic office visit	\$2 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	Three (3) percent coinsurance not to exceed \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment
Ophthalmological or optometric office visit (99000 series evaluation and management codes)	\$2 copayment	Full amount of the copayment

(2) Physician services shall:

(a) Include care provided by a physician, a certified pediatric and family nurse practitioner, a nurse midwife, an advanced registered nurse practitioner, or a physician assistant; and

(b) Not include a visit to a federally-qualified health center, rural health clinic, or a primary care center.

(3) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(4) The maximum amount of cost-sharing shall not exceed five

(5) percent of a family's income for a quarter.

(5) If a service or benefit is not listed in the global choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service for an individual in the global choices benefit plan.

Section 5. Optimum Choices Copayments and Coinsurance. (1) Except for an individual excluded pursuant to Section 6(1) of this administrative regulation, a recipient of the optimum choices plan shall pay the copayment or coinsurance amount established in this table, with the corresponding provider reimbursement deductions.

Benefit	Copayment or Coinsurance Amount	Amount of Copayment or Coinsurance Deducted from Provider Reimbursement
Acute inpatient hospital admission	\$10 copayment	Full amount of the copayment
Outpatient hospital or ambulatory surgical center visit	\$3 copayment	Full amount of the copayment
Generic prescription drug or an atypical anti-psychotic drug if no generic equivalent for the atypical anti-psychotic drug exists for a recipient who does not have Medicare Part D drug coverage	\$1 copayment	Full amount of the copayment
Preferred brand name drug for a recipient who does not have Medicare Part D drug coverage	\$2 copayment	Full amount of the copayment
Nonpreferred brand name drug for a recipient who does not have Medicare Part D drug coverage	5% coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription	Full amount of the coinsurance, not to exceed \$20 per nonpreferred brand name drug prescription
Emergency room for a nonemergency visit	5% coinsurance, up to a maximum of \$6	No deduction
DMEPOS	3% coinsurance up to a maximum of \$15 per item	The amount of the coinsurance or, if applicable, \$15
Podiatry office visit	\$2 copayment	Full amount of the copayment

(2) A recipient shall not be liable for more than:

(a) \$225 per calendar year for prescription drug copayments or coinsurance; or

(b) \$225 per calendar year for service copayments or coinsurance.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

(4) If a service or benefit is not listed in the optimum choices cost-sharing grid, the cost-sharing obligation shall be \$0 for that service or benefit for an individual in the optimum choices benefit plan.

Section 6.] Copayment[, Coinsurance and Premium] General Provisions and Exemptions[Exclusions]. (1)(a) **Except for a foster care child**, a recipient shall not be exempt from paying the eight (8) dollar copayment for a nonpreferred brand name drug prescription.

(b) **A/No copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child.**

(c) Except for the mandatory copayment referenced in paragraph (a) of this subsection, the department shall impose no cost sharing for the following:

1.[(a)] A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19), and who is required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;

2.[(b)] A preventive service[(for example, well baby and well child care and immunizations)] provided to a child under eighteen (18) years of age regardless of family income;

3.[(c)] A service furnished to a pregnant woman;

4.[(d)] A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);

5.[(e)] A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;

6.[(f)] An emergency service as defined by 42 C.F.R. 447.53;

7.[(g)] A family planning service or supply as described in 42

U.S.C. 1396d (a)(4)(C); or

8.[(h)] A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).

(2) The department has determined that any individual liable for a copayment[, coinsurance amount or premium] shall:

(a) Be able to pay a required copayment[, coinsurance amount or premium]; and

(b) Be responsible for a required copayment[, coinsurance or premium].

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment[or coinsurance amount] for a recipient.

(4) A parent or guardian shall be responsible for a copayment[, coinsurance amount or premium] imposed on a dependent child under the age of twenty-one (21).

(5) **[(a)] Provisions regarding a provider's ability to deny a service or benefit based on a recipient's failure to make a required copayment[or coinsurance payment][shall be as established in:**

**[(a)] [KRS 205.6312(4) shall apply regarding a service and a copayment obligation]; and**

**[(b) 2012 Ky. Acts ch. 144, Part I.G.3.b.(14)]** [2006 Ky. Acts ch. 252 and in accordance with 42 U.S.C. 1396o-1];

**[(b)] Any amount of uncollected copayment by a provider from a recipient shall be considered a debt to the provider.**

(6) **[(a)] A provider shall:**

**1.[(a)] [Shall]** Collect from a recipient the copayment[, coinsurance amount or premium] as imposed by the department for a recipient in accordance with this administrative regulation;

**2.[(b)] [Shall]** Not waive a copayment[, coinsurance amount, or premium] obligation as imposed by the department for a recipient; and

**3.[(c)] [May]** Collect a copayment[, coinsurance amount, or premium] at the time a benefit is provided or at a later date.

**[(b) Regarding a service or item for an enrollee in which the managed care organization in which the enrollee is enrolled does not impose a copayment, the provider shall not collect a copayment from the enrollee.**

(7) Cumulative cost sharing for [premium payments and] copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) **In accordance with 42 C.F.R. 447.82, [A monthly premium**

for a family who receives benefits under 42 U.S.C. 1396r-6(b) shall not exceed three (3) percent of:

(a) The family's average gross monthly income; or

(b) The family's average gross monthly income minus the average monthly costs of child care necessary for the employment of the caretaker relative.

(9) the department shall not increase its reimbursement to a provider to offset an uncollected copayment[, coinsurance amount or premium] from a recipient.[Section 7. Premiums for KCHIP-- Separate Program Recipients.

(1) A family with children participating in the KCHIP-Separate Program shall pay a premium of twenty (20) dollars per family, per month.

(2)(a) The family of a new KCHIP-Separate Program eligible shall be required to pay a premium beginning with the first full month of benefits after the month of application.

(b) Benefits shall be effective with the date of application if the premium specified in paragraph (a) of this subsection has been paid.

(3) Retroactive eligibility as described in 907 KAR 20:010, Section 1(3), shall not apply to a recipient participating in the KCHIP-Separate Program.

(4)(a) If a family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(b)1. A KCHIP-Separate Program recipient shall be eligible for reenrollment upon payment of the missed premium.

2. If twelve (12) months have elapsed since a missed premium, a KCHIP-Separate Program recipient shall not be required to pay the missed premium before reenrolling.

Section 8. Premiums for Transitional Medical Assistance Recipients. (1) A family receiving a second six (6) months of TMA, whose monthly countable earned income is greater than 100 percent of the federal poverty limit, shall pay a premium of thirty (30) dollars per family, per month.

(2) If a TMA family fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the benefit month for which the premium has not been paid unless the family has established to the satisfaction of the department that good cause existed for failure to pay the premium on a timely basis. Good cause shall exist under the following circumstances:

(a) An immediate family member living in the home was institutionalized or died during the payment month;

(b) The family was victim of a natural disaster including flood, storm, earthquake, or serious fire;

(c) The caretaker relative was out of town for the payment month; or

(d) The family moved and reported the move timely, but the move resulted in:

1. A delay in receiving the billing notice; or

2. Failure to receive the billing notice.]

Section 4.[9.] Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in subsection (2) of this section.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.[Section 10. Notices and Collection of Premiums. (1) Premiums shall be collected in accordance with Sections 7, 8, and 9 of this administrative regulation.

(2) The department shall give advance written notice of the:

(a) Premium amount; and

(b) Date the premium is due.

(3) To continue to receive benefits, a family shall pay a premium:

(a) In full; and

(b) In advance.

(4) If a family pays the required premiums semiannually or quarterly in advance, they shall receive a ten (10) percent discount.]

Section 5.[14.] Provisions for Enrollees[Recipients in Medicaid-Managed Care].[(4)] A managed care organization[entity]:

(1)[(a)] Shall not impose[on a recipient receiving services through a managed care entity operating in accordance with 907 KAR 1:705] a copayment on an enrollee[, coinsurance or premium] that exceeds a copayment[, coinsurance or premium] established in this administrative regulation; and

(2)[(b)] May impose on an enrollee[upon a recipient referenced in paragraph (a) of this subsection]:

(a)[1.] A lower copayment[, coinsurance or premium] than established in this administrative regulation; or

(b)[2.] No copayment[, coinsurance or premium. (2) A six (6) month guarantee of eligibility as described in 907 KAR 1:705, Section 3(6)] shall not apply to a recipient required to pay a premium pursuant to Section 7 of this administrative regulation].

Section 6.[12.] Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7.[13.][**Notice of Discontinuance, Hearings, and** Appeal Rights.](1) The department shall give written notice of, and an opportunity to pay, past due premiums prior to discontinuance of benefits for nonpayment of a premium.

(2)(a) If a family's income has declined, the family shall submit documentation showing the decline in income.

(b) Following receipt of the documentation, the department shall determine if the family is required to pay the premiums established in Section 7, 8, or 9 of this administrative regulation using the new income level.

(c) If the family is required to pay the premium and the premium has not been paid, the benefits shall be discontinued in accordance with Section 7(4)(a), 8(2), or 9(6) of this administrative regulation.

(d) If the family is not required to pay the premium, benefits shall be continued under an appropriate eligibility category.

(3) The department shall provide the recipient with an opportunity for a hearing in accordance with 907 KAR 1:560 upon discontinuing benefits for nonpayment of premiums.

(4) An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.



Section 8. Effective Date. The cost sharing provisions and requirements established in this administrative regulation shall be effective beginning January 1, 2014.

Section 9. Federal Approval and Federal **Financial Participation[Funding]**. The department's copayment provisions established in this administrative regulation shall be contingent upon:

- (1) ~~The~~ Receipt of federal financial participation; and
- (2) Centers for Medicare and Medicaid Services' approval.

**Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.**

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: March 31, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:631.[Reimbursement of] Vision Program reimbursement provisions and requirements[services].**

RELATES TO: KRS 205.520, 42 C.F.R. 440.40, 440.60, 447 Subpart B, 42 U.S.C. 1396a-d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes Medicaid Program reimbursement provisions and requirements for vision services provided to a Medicaid recipient who is not enrolled in a managed care organization[provisions for vision services].

Section 1. Definitions. (1) **"CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.**

(2) "Department" means the Department for Medicaid Services or its **designee[designated agent]**.

(3)(2) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4)(3) "Federal financial participation" is defined by 42 C.F.R. 400.203.

(5)(4) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that **represents[represent]** procedures or items.

(6)(5) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(7)(4) ["Global Insight Index"] means an indication of changes in health care costs from year to year developed by Global Insight.

(3) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(8)(7)(4) "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

~~(9)(8)~~ "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320[is defined by KRS 311.271].

~~(10)(9)~~ "Provider" is defined by KRS 205.8451(7).

~~(11)(10)~~ "Recipient" is defined by KRS 205.8451(9).

~~(12) "Usual and customary charge" means the uniform amount the provider charges in the majority of cases for the service or item[205.8541(9)]~~ a physician, optician, or optometrist, who is licensed to prepare and dispense lenses and eyeglasses in accordance with an original, written prescription.

~~(5) "Resource-based relative value scale unit" or "RBRVS unit" means a value based on the service which takes into consideration the practitioners' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price].~~

Section 2. General Requirements. (1)(a) For the department to reimburse for a vision service or item, the **requirements established in 907 KAR 1:632 and this administrative regulation shall be met.**

**(2)[service or item shall be:**

**1. Provided:**

**a. To a recipient; and**

**b. By a provider who:**

**(i) Is enrolled in the Medicaid Program pursuant to 907 KAR 1:672;**

**(ii) Except as established in paragraph (b) of this subsection, is currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and**

**(iii) Is authorized by this administrative regulation to provide the given service or item;**

**2. Covered in accordance with 907 KAR 1:632;**

**3. Medically necessary;**

**4. A service or item authorized within the scope of the provider's licensure; and**

**5. A service or item listed on the Department for Medicaid Services Vision Program Fee Schedule.**

**(b) In accordance with 907 KAR 17:010, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the Medicaid Program if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program.**

**(2)(a) To be recognized as an authorized provider of vision services, an optometrist shall:**

**1. Be certified by the:**

**a. Kentucky Board of Optometric Examiners; or**

**b. Optometric examiner board of the state in which the optometrist practices if the optometrist practices in a state other than Kentucky;**

**2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and**

**3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.**

**(b)1. To be recognized as an authorized provider of vision services, an in-state optician shall:**

**a. Hold a current license in Kentucky as an ophthalmic dispenser;**

**b. Comply with the requirements established in KRS Chapter 326;**

**c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and**

**d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.**

**2. To be recognized as an authorized provider of vision services, an out-of-state optician shall:**

**a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;**

**b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and**

**c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.**

**(3)(a)** If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and
2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

**(3)(4) A provider shall comply with:**

**(a) 907 KAR 1:671;**

**(b) 907 KAR 1:672; and**

**(c) All applicable state and federal laws.**

**(5)(a)** If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

**(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.**

**(d) A provider shall comply with KRS 205.622.**

**(4)(6)** The department shall not reimburse for:

(a) A service with a CPT code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule; or

(b) An item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule.

Section 3. Reimbursement for Covered Procedures and Materials for Optometrists. (1) Except for [With the exception of materials or] a clinical laboratory service, the department's reimbursement for a covered service or covered item provided by a participating optometrist, within the optometrist's scope of licensure, shall be the lesser of the:

(a) Optometrist's usual and customary charge for the service or item; or

(b) Reimbursement established on the Department for Medicaid Services Vision Program Fee Schedule for the service or item.

(2) The department shall reimburse for a covered clinical laboratory service in accordance with 907 KAR 1:028 [based on the optometrist's usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using the Kentucky Medicaid fee schedule, specified in 907 KAR 3:010, Section 3, developed from a resource-based relative value scale (RBRVS) on parity with physicians.

(2) If an RBRVS based fee has not been established, the department shall set a reasonable fixed upper limit for the procedure. The upper limit shall be determined following a review of rates paid for the service by three (3) other sources. The average of these rates shall be compared with similar procedures paid by the department to set the upper limit for the procedure.

(3) With the exception of the following dispensing services, the department shall use the Kentucky conversion factor for "all nonanesthesia related services" as established in 907 KAR 3:010, Section 3(2)(b):

- (a) Fitting of spectacles;
- (b) Special spectacles fitting; and
- (c) Repair and adjustment of spectacles.

(4) Reimbursement for a dispensing service fee or a repair service fee shall be as follows:

Procedure	Upper Limit
92340 (Fitting of spectacles)	\$33
92341 (Fitting of spectacles)	\$38
92352 (Special spectacles fitting)	\$33
92353 (Special spectacles fitting)	\$39
92370 (Repair & adjust spectacles)	\$29

(5) The department shall:

(a) Reimburse for:

1. A single vision lens at twenty-eight (28) dollars per lens;
2. A bifocal lens at forty-three (43) dollars per lens; and
3. A multi-focal lens at fifty-six (56) dollars per lens; and

(b) Annually adjust the rates established in paragraph (a) of this subsection by the Global Insight Index.

(6)(a) The department shall reimburse for frames or a part of frames (not lenses) at the optical laboratory cost of the materials not to exceed the upper limit for materials as established by the department.

(b) The upper payment limit for frames shall be fifty (50) dollars.

(c) An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(7)(a) Reimbursement for a covered clinical laboratory service shall be based on the Medicare allowable payment rates.

(b) For a laboratory service with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges].

Section 4.[3.] Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. The department's reimbursement for a covered service or covered item provided by a participating ophthalmic dispenser [within the ophthalmic dispenser's scope of licensure] shall be the lesser of the:

(1) Ophthalmic dispenser's usual and customary charge for the service or item; or

(2) Reimbursement established on the Department for Medicaid Services Vision Program Fee Schedule for the service or item [in accordance with Section 2 of this administrative regulation].

Section 5.[4.] Reimbursement Limitations. (1) The department shall not reimburse for:

(a) A telephone consultation;

(b) [shall be excluded from payment.

(2) Contact lenses, except as established in 907 KAR 1:632,

**Section 5(1):**

(c) [shall be excluded from payment.

(3) Safety glasses unless [shall be covered if] proof of medical necessity is documented;

(d) [

(4) A prism, if medically necessary, shall be added within the cost of the lenses.

(5) A press-on prism; or

(e) A service with a CPT code or item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule [shall be excluded from payment].

(2)(a) The department shall reimburse for no more than one (1) pair of eyeglasses per recipient per calendar year [twelve (12) consecutive month period] unless:

1. The recipient's eyeglasses are broken or lost during the calendar year [twelve (12) consecutive month period]; or

2. The eyeglass prescription for the recipient is changed during the calendar year [twelve (12) consecutive month period].

(b) If an event referenced in paragraph (a) 1 or 2 of this subsection occurs within the calendar year [twelve (12) consecutive month period], the department shall reimburse for one (1) additional pair of eyeglasses for the recipient during the calendar year [twelve (12) consecutive month period].

(3) A prism, if medically necessary, shall be included in the cost of lenses.

Section 6.[5.] Third Party Liability. (1) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(2) A provider shall comply with KRS 205.622.

Section 7. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for an

item or service reimbursed by the department via this administrative regulation.

Section 8. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9.[6.] Appeal Rights. A provider may appeal a department decision as to the application of this administrative regulation~~[(1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.~~

~~(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.~~

~~(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.~~

Section 10. Incorporation by Reference. (1) "Department for Medicaid Services Vision Program Fee Schedule", ~~May 13, [April] 2014~~**[December 2013]**, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: March 31, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 1:632. Vision Program coverage provisions and requirements.**

RELATES TO: KRS 205.520, 42 C.F.R. 440.40, 440.60, 447 Subpart B, 42 U.S.C. 1396a-d, 45 C.F.R. 147.126

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 441.30, 42 C.F.R. 441.56(c)(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Kentucky Medicaid Program provisions and requirements regarding the coverage of vision services.

Section 1. Definitions. (1) "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Federal financial participation" is defined by 42 C.F.R.

400.203.

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services (**CMS**) that ~~represents~~**[represent]** procedures or items.

(6) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(7) "**Medicaid basis**" means a scenario in which:

**(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:**

**1. 907 KAR 1:671; and**

**2. 907 KAR 1:672;**

**(b) The Medicaid Program is the payer for the service; and**

**(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.**

(8) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

~~(9)~~**(8)** "Ophthalmic dispenser" means an individual who is qualified to engage in the practice of ophthalmic dispensing in accordance with KRS 326.030 or 326.040.

~~(10)~~**(9)** "Optometrist" means an individual who is licensed as an optometrist in accordance with KRS Chapter 320~~[is defined by KRS 311.271]~~.

~~(11)~~**(10)** "Provider" is defined by KRS 205.8451(7).

~~(12)~~**(11)** "Recipient" is defined by KRS 205.8451(9).

Section 2. General Requirements **and Conditions of Participation.** (1)(a) For the department to reimburse for a vision service or item, the service or item shall be:

1. Provided:

a. To a recipient; and

b. By a provider who is:

(i) Enrolled in the Medicaid Program pursuant to 907 KAR 1:672;

(ii) **Except as provided in paragraph (b) of this subsection,** currently participating in the Medicaid Program pursuant to 907 KAR 1:671; and

(iii) Authorized by this administrative regulation to provide the given service or item;

2. Covered in ~~accordance~~**[according]** with this administrative regulation;

3. Medically necessary;

4. A service or item authorized within the scope of the provider's licensure; and

5. A service or item listed on the Department for Medicaid Services Vision Program Fee Schedule~~;~~**[or]**

(b) In accordance with~~[Section 3(3) of]~~ 907 KAR ~~17:015, Section 3(3)~~**[17:010]**, a provider of a service to an enrollee shall not be required to be currently participating in the ~~fee-for-service~~ Medicaid Program~~[if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program]~~.

(2)(a) To be recognized as an authorized provider of ~~vision~~**[visions]** services, an optometrist shall:

1. Be ~~licensed~~**[certified]** by the:

a. Kentucky Board of Optometric Examiners; or

b. Optometric examiner board in ~~the state in~~ which the optometrist practices if the optometrist practices in a state other than Kentucky;

2. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

3. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(b)1. To be recognized as an authorized provider of ~~vision~~**[visions]** services, an in-state optician shall:

a. Hold a current license in Kentucky as an ophthalmic dispenser;

b. Comply with the requirements established in KRS Chapter 326;

c. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

d. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

2. To be recognized as an authorized provider of vision[visions] services, an out-of-state optician shall:

a. Hold a current license in the state in which the optician practices as an ophthalmic dispenser;

b. Submit to the department proof of licensure upon initial enrollment in the Kentucky Medicaid Program; and

c. Annually submit to the department proof of licensure renewal including the expiration date of the license and the effective date of renewal.

(c) A physician shall be an authorized provider of vision services.

(3)[(a) If a procedure is part of a comprehensive service, the department shall:

1. Not reimburse separately for the procedure; and

2. Reimburse one (1) payment representing reimbursement for the entire comprehensive service.

(b) A provider shall not bill the department for multiple procedures or procedural codes if one (1) CPT code or HCPCS code is available to appropriately identify the comprehensive service provided.

(4)] A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;[and]

(c) All applicable state and federal laws; and

(d) The confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164.

(4)[(5)(a) If a provider receives any duplicate or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(c) Nonduplication of payments and third-party liability shall be in accordance with 907 KAR 1:005.

(d) A provider shall comply with KRS 205.622.

(6)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(7)(a) A provider shall:

1. Have the freedom to choose whether to provide services to a recipient; and

2. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any services to the recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis; and

2. Whether or not the:

a. Provider is a Medicaid-participating provider; or

b. Service is a Medicaid-covered service.

[(8) The department shall not reimburse for:

(a) A service with a CPT code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule; or

(b) An item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule.]

Section 3. Vision Service Coverage. (1) Vision service coverage shall be limited to a service listed with a CPT code or item with an HCPCS code on the Department for Medicaid Services Vision Program Fee Schedule.

(2) Vision service limits shall be as established on the Department for Medicaid Services Vision Program Fee Schedule.

Section 4. Coverage of Eyeglasses and Frames. (1) To be eligible for eyeglasses covered by the department, a recipient shall:

(a) Be under the age of twenty-one (21) years, including the month in which the recipient becomes twenty-one (21) years of age; and

(b) Have a diagnosed visual condition that:

1. Requires the use of eyeglasses;

2. Is within one (1) of the following categories:

a. Amblyopia;

b. Post surgical eye condition;

c. Diminished or subnormal vision; or

d. Other diagnosis which indicates the need for eyeglasses; and

3. Requires a prescription correction in the stronger lens no weaker than:

a. +0.50, 0.50 sphere +0.50, or 0.50 cylinder;

b. 0.50 diopter of vertical prism; or

c. A total of two (2)[(two) 2] diopter of lateral prism.

(2) Provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631[(a) The department shall reimburse for no more than one (1) pair of eyeglasses per recipient per twelve (12) consecutive month period unless:

1. The recipient's eyeglasses are broken or lost during the twelve (12) consecutive month period; or

2. The eyeglass prescription for the recipient is changed during the twelve (12) consecutive month period.

(b) If an event referenced in paragraph (a)1 or 2 occurs within the twelve (12) consecutive month period, the department shall reimburse for one (1) additional pair of eyeglasses for the recipient during the twelve (12) consecutive month period].

(3) For the department to cover:

(a) A frame, the frame shall be:

1. First quality;

2. Free of defects; and

3. Have a warranty of at least one (1) year; or

(b) A lens, the lens shall be:

1. First quality;

2. Free of defects;

3. Meet the United States Food and Drug Administration's impact resistance standards; and

4. Polycarbonate and scratch coated.

(4) The dispensing of eyeglasses shall include:

(a) Single vision prescriptions;

(b) Bi-focal vision prescriptions;

(c) Multi-focal vision prescriptions;

(d) Services to frames; or

(e) Delivery of the completed eyeglasses which shall include:

1. Instructions in the use and care of the eyeglasses; and

2. Any adjustment, minor or otherwise, for a period of one (1) year.

(5) A provider shall be responsible, at no additional cost to the department or the recipient, for:

(a) An inaccurately filled prescription;

(b) Defective material; or

(c) An improperly fitted frame.

Section 5. Contact Lenses, Tint, and Plano Safety Glasses. (1) The department shall not reimburse for contact lenses substituted for eyeglasses unless:

(a) The corrected acuity in a recipient's stronger eye is twenty (20)/fifty (50) and shall be improved with the use of contact lenses;

(b) The visual prescription is of  $\pm 8.00$  diopter or greater; or

(c) The recipient's diagnosis is 4.00 diopter anisometropia.

(2) The department shall not reimburse for tint unless the prescription specifically indicates a diagnosis of photophobia.

(3) The department shall not reimburse for plano safety glasses unless the glasses are medically indicated for the recipient.

Section 6. Noncovered Services or Items. The department shall not reimburse for:

- (1) Tinting if not medically necessary;
- (2) Photochromics if not medically necessary;
- (3) Anti-reflective coatings if not medically necessary;
- (4) Other lens options which are not medically necessary;
- (5) Low vision services;
- (6) A press-on prism; or

(7) A service with a CPT code or item with an HCPCS code that is not listed on the Department for Medicaid Services Vision Program Fee Schedule.

Section 7. Required Provider Documentation. (1)(a) In accordance with 42 C.F.R. 431.17, a provider shall maintain medical records of a service provided to a recipient for the period of time currently required by the United States Health and Human Services Secretary unless the department requires a retention period, pursuant to 907 KAR 1:671, longer than the period required by the United States Health and Human Services Secretary.

(b) If, pursuant to 907 KAR 1:671, the department requires a medical record retention period longer than the period required by the United States Health and Human Services Secretary, the medical record retention period established in 907 KAR 1:671 shall be the minimum record retention period.

(c) A provider shall maintain medical records of a service provided to a recipient in accordance with:

1. 45 C.F.R. 164.316; and
2. 45 C.F.R. 164.306.

(2) A provider shall maintain the following documentation in a recipient's medical record:

(a) Any covered service or covered item provided to the recipient;

(b) For each covered service or covered item provided to the recipient:

1. A signature by the individual who provided the service or item signed on the date the service or item was provided;
2. The date that the service or item was provided; and
3. Demonstration that the covered service or covered item was provided to the recipient;

(c) The diagnostic condition necessitating the service or item; and

(d) The medical necessity as substantiated by an appropriate medical order.

Section 8. **No Duplication of Service.** (1) **The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.**

(2) **For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physician services program.**

**Section 9. Third Party Liability. A provider shall comply with KRS 205.622.**

**Section 10. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.**

**Section 11.** Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;
2. The signed consent form; and

3. The original filed signature [upon request].

Section **12.[9.]** Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section **13.[10.]** Appeal Rights. An appeal of a department decision regarding a Medicaid recipient who is:

(1) Enrolled with a managed care organization shall be in accordance with 907 KAR 17:010; or

(2) Not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

Section **14.[14.]** Incorporation by Reference. (1) "Department for Medicaid Services Vision Program Fee Schedule", May 13, [April] 2014 [December 2013], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: March 31, 2014 at 3 p.m.

CONTACT PERSON: Tricia Orme, email [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Provider Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 3:005. Coverage of physicians' services.**

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 447.26, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d-8, 1396a(a)(19), (30)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds ~~[for the provision of medical assistance to Kentucky's indigent citizenry]~~. This administrative regulation establishes the Medicaid Program coverage provisions and requirements ~~[provisions]~~ relating

to physicians' services[ for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy].

Section 1. Definitions. (1) **"Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).**

**(2) ["Biological"]** means the definition of "biologicals" pursuant to 42 U.S.C. 1395x(t)(1).

**(2) ["Common practice"]** means **an arrangement through[a contractual partnership in]** which a physician assistant administers health care services under the**[employment and]** supervision of a physician **via a supervisory relationship that has been approved by the Kentucky Board of Medical Licensure.**

**(3) [(2)]** (3) "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160; or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(4) "CPT code" means a code used for reporting procedures and services performed by medical practitioners[physicians] and published annually by the American Medical Association in Current Procedural Terminology.

**(4) [(3)]** (5) "Department" means the Department for Medicaid Services or its designee.

**(5) [(4)]** "Designated controlled substance provider" means the provider designated as a lock-in recipient's controlled substance prescriber:

**(a) [(1)]** Pursuant to 907 KAR 1:677, **if the recipient is not an enrollee; or**

**(b) [(2)]** **As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.**

**(6) [(5)]** "Designated primary care provider" means the provider designated as a lock-in recipient's primary care provider:

**(a) [(1)]** Pursuant to 907 KAR 1:677, **if the recipient is not an enrollee; or**

**(b) [(2)]** **As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee.**

**(7) [(6)]** "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

**(8) [(7)]** "Early and periodic screening and diagnosis and treatment" or "EPSDT" is defined by 42 C.F.R. 440.40(b). ["Drug" means the definition of "drugs" pursuant to 42 U.S.C. 1395x(t)(1).]

**(9) [(8)]** "Emergency care" means:

(a) Covered inpatient or[and] outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

**(10) [(9)]** "Enrollee" means a recipient who is enrolled with a managed care organization.

**(11) [(10)]** "Federal financial participation" is defined by 42 C.F.R. 400.203. ["EPSDT" means early and periodic screening, diagnosis, and treatment.

(10) "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

(a) 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

(b) 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

(c) 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

(e) 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

(d) 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

(e) Has a designated package code of 2, 3, 4, or 5-]

**(12) [(14)]** "Global period" means [occurring during] the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

**(13) [(12)]** "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive Kentucky Transitional Assistance Program (K-TAP) benefits and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP benefits and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive Supplemental Security Income (SSI) benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive State Supplementations Program (SSP) benefits and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; or

(h) Pregnant women.

(13) "Graduate medical education program" or "GME Program" means [one (1) of the following]:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

**(14) [(13)]** (14) "Incidental" means that a medical procedure:

**(a)** Is performed at the same time as a primary procedure; and

**(b) [(a)]** Requires little additional resources; or

**2. [(b)]** Is clinically integral to the performance of the primary procedure.

**(15) [(14)]** (15) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

**(16) [(15)]** "Lock-in recipient" means:

(a) A recipient enrolled in the lock-in program in accordance with 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(17)/(16)] "KenPAC" means the Kentucky Patient Access and Care System.

(17) "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(18)] "Locum tenens APRN" means an APRN:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are billed under the APRN's provider number.

(18) "Locum tenens physician" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(19)/(17)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(20)/(18)] "Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient as a Medicaid-participating provider in accordance with:

1. 907 KAR 1:671; and

2. 907 KAR 1:672;

(b) The Medicaid Program is the payer for the service; and

(c) The recipient is not liable for payment to the provider for the service other than any cost sharing obligation owed by the recipient to the provider.

(21)/(19)] "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(22)/(20)] "Medical resident" means [one (1) of the following]:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(23)/(21)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(24)/(22)] "Non-Medicaid basis" means a scenario in which:

(a) A provider provides a service to a recipient;

(b) The Medicaid Program is not the payer for the service; and

(c) The recipient is liable for payment to the provider for the service.

(25)/(23)] "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with an intellectual disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with an intellectual disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1-]

(24)/(23)] "Other licensed medical professional" means a health care provider:

(a) Other than a physician, physician assistant, advanced practice registered nurse[practitioner], certified registered nurse anesthetist, nurse midwife, or registered nurse; and

(b) Who has been approved to practice a medical specialty by the appropriate licensure board.

(26)/(25)] "Other provider preventable condition" is defined in 42 C.F.R. 447.26(b).

(27)/(26)] (24)] "Physician assistant" is defined in KRS 311.840(3).

(28)/(27)] "Physician injectable drug" means an injectable, infused, or inhaled drug or biological that:

(a) Is not typically self-administered;

(b) Is not excluded as a noncovered immunization or vaccine;

(c) Requires special handling, storage, shipping, dosing, or administration; and

(d) Is a rebatable drug.

(29)/(28)] "Podiatrist" is defined by KRS 205.510(12).

(30)/(29)] "Rebatable drug" means a drug for which the drug's manufacturer has entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a).

(31)/(30)] "Recipient" is defined by KRS 205.8451(9)/205.8541(9).

(32)/(31)] (25)] "Screening" means the evaluation of a recipient by a physician to determine:

(a) If [The presence of] a disease or medical condition is present; and

(b) If further evaluation, diagnostic testing, or treatment is needed.

(33)/(32)] (26)] "Special handling, storage, shipping, dosing or administration" means one (1) or more of the following requirements as described in the dosing and administration section of a medication's package insert:

(a) Refrigeration of the medication;

(b) Protection from light until time of use;

(c) Overnight delivery;

(d) Avoidance of shaking or freezing; or

(e) Other protective measures not required for most orally-administered medications.

(27)] "Supervising physician" is defined in KRS 311.840(4).

(34)/(33)] (28)] "Supervision" is defined in KRS 311.840(6).

(35)/(34)] (29)] "Timely filing" means receipt of a Medicaid claim by the department[Medicaid]:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(36)/(35)] (30)] "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1)(a) A participating physician shall:

1. Be licensed as a physician in the state in which the medical practice is located;

2. Comply with the:

a. Terms and conditions established in 907 KAR 1:005, 907 KAR 1:671, and 907 KAR 1:672;

b. Requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d-8 and 45 C.F.R. Parts 160 and 164;

3. Have the freedom to choose whether to provide services to a recipient; and

4. Notify the recipient referenced in paragraph (b) of this subsection of the provider's decision to accept or not accept the recipient on a Medicaid basis prior to providing any service to the

recipient.

(b) A provider may provide a service to a recipient on a non-Medicaid basis:

1. If the recipient agrees to receive the service on a non-Medicaid basis before the service begins; and

2. Whether or not the:

a. Provider is a Medicaid-participating provider; or

b. Service is a Medicaid-covered service.

(2) ~~A participating physician shall comply with the terms and conditions established in the following administrative regulations:~~

~~(a) 907 KAR 1:005, Nonduplication of payments;~~

~~(b) 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions; and~~

~~(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.~~

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d-8 and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If a provider agrees to provide services to a recipient, the provider:

(a) Shall bill the department [Medicaid] rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

(3)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(4)(a) A provider shall maintain a current health record for each recipient.

(b) 1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(5)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(6) A provider shall comply with 45 C.F.R. Part 164.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a:

1. Medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

2. ~~(b) A service provided by a~~ Locum tenens physician who provides direct physician contact; ~~[or]~~

3. Physician assistant in accordance with Section 7 of this administrative regulation; ~~or~~

4. Locum tenens APRN who provides direct APRN contact;

~~(b) [(e)] A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;~~

~~(c) [(d)] The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;~~

~~(d) [(e)] A [preauthorized] sleep disorder service [if provided in a physician operated and supervised sleep disorder diagnostic center]; or~~

~~(e) [(f)] A telehealth consultation provided [by a consulting medical specialist] in accordance with 907 KAR 3:170; or~~

~~(g) A service provided by a physician assistant in accordance with Section 7 of this administrative regulation.~~

(3) A service provided by an [individual who meets the definition of] other licensed medical professional shall be covered if the other licensed medical professional is:

(a) ~~[The individual is]~~ Employed by the supervising physician; ~~and~~

(b) ~~[The individual is]~~ Licensed in the state of practice; ~~and~~

~~(c) The supervising physician has direct physician contact with the recipient].~~

(4) A sleep disorder service shall be covered if performed in:

(a) A hospital; or

(b) [1.] A sleep laboratory if the sleep laboratory has documentation demonstrating that it complies with criteria approved by the:

1. [a.] American Sleep Disorders Association; or

2. [b.] American Academy of Sleep Medicine; or

(c) [2.] An independent diagnostic testing facility that:

1. [a.] Is supervised by a physician trained in analyzing and interpreting sleep disorder recordings; and

2. [b.] Has documentation demonstrating that it complies with criteria approved by the:

a. [(i)] American Sleep Disorders Association; or

b. [(ii)] American Academy of Sleep Medicine.

Section 4. Service Limitations. (1) A covered service provided to a lock-in recipient [placed in "lock-in" status in accordance with 907 KAR 1:677] shall be limited to a service provided by the lock-in recipient's designated primary care provider or designated controlled substance prescriber [lock-in provider] unless:

(a) The service represents emergency care; or

(b) The lock-in recipient has been referred to the provider by the lock-in recipient's designated primary care provider [by the "lock-in" provider].

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 11:034 [Sections 3 through 5].

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in a physician's office shall not be covered as a separate reimbursable service through the physicians' program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;



(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused, or inhaled drug or biological that:

1. Is not typically self-administered;

2. Is not excluded as a noncovered immunization or vaccine; and

3. Requires special handling, storage, shipping, dosing, or administration.

(5) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device; or

(i) An implantable contraceptive device

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that:

1. Is not typically self-administered;

2. Is not excluded as a noncovered immunization or vaccine; and

3. Requires special handling, storage, shipping, dosing or administration.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of 42 C.F.R. 441, Subpart E and Subpart F [the federal regulations].

(6)(a) Except as provided in paragraph (b) of this subsection, [(5)] [(6)] coverage for:

(a)] a service designated as a psychiatry service CPT code and provided by a physician [other than a board certified or board eligible psychiatrist or an advanced practice registered nurse with a specialty in psychiatry] shall be limited to four (4) services, per physician, per recipient, per twelve (12) months. [(a)]

(b) Coverage for a service designated as a psychiatry service CPT code that is provided by a board certified or board eligible psychiatrist or by an advanced practice registered nurse with a specialty in psychiatry shall not be subject to the limits established in paragraph (a) of this subsection.

(c) Coverage for:

(7)(a) Coverage for] an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(d) Coverage for:] or

(c)]:

(b) Coverage for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per year, per physician.

(8) Coverage for] A fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(7) [(6)] [(9)(a)] An anesthesia service shall be covered if:

(a) Administered by:

1. An anesthesiologist who remains in attendance throughout the procedure; or

2. An individual who:

a. Is licensed in Kentucky to practice anesthesia;

b. Is licensed in Kentucky within his or her scope of practice;

and

c. Remains in attendance throughout the procedure;

(b) Medically necessary; and

(c) Not provided as part of an all-inclusive CPT code.

(8) [(7)] administered by an anesthesiologist who remains in attendance throughout the procedure;

(b) Except for An anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(10)] The following [services] shall not be covered:

(a) An acupuncture service;

(b) [Allergy immunotherapy for a recipient age twenty-one (21) years or older;

(c)] An autopsy;

(c)] [(d)] A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);

(d)] [(e)] Except for therapeutic bandage lenses, contact lenses;

(e)] [(f)] A hysterectomy performed for the purpose of sterilization;

(f)] [(g)] Lasik surgery;

(g)] [(h)] Paternity testing;

(h)] [(i)] A procedure performed for cosmetic purposes only;

(i)] [(j)] A procedure performed to promote or improve fertility;

(j)] [(k)] Radial keratotomy;

(k)] [(l)] A thermogram;

(l)] [(m)] An experimental service which is not in accordance with current standards of medical practice; [or]

(m)] [(n)] A service which does not meet the requirements established in Section 3(1) of this administrative regulation;

(n) Medical direction of an anesthesia service; or

(o) Medical assistance for an other provider preventable condition in accordance with 907 KAR 14:005.

Section 5. Prior Authorization Requirements for Recipients Who are Not Enrolled with a Managed Care Organization] and KenPAC Referral Requirements]. (1) The following procedures for a recipient who is not enrolled with a managed care organization shall require prior authorization by the department:

(a) Magnetic resonance imaging[(MRI)];

(b) Magnetic resonance angiogram[(MRA)];

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography[(PET)];

(e) Cineradiography or videoradiography[video radiography];

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) A covered unlisted[An unlisted covered] procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service; [or]

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(4) A referring physician, a physician who wishes to provide a given service, a podiatrist, a chiropractor, or an advanced practice registered nurse;

(a)] [practitioner] May request prior authorization from the department; and

(b) If requesting prior authorization, [

(5) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner] shall request prior authorization by:

1. Mailing or faxing:

a. [(a)] A written request to the department with [sufficient] information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

b. [(b)] If applicable, any required federal consent forms; or

2. Submitting a request via the department's web-based portal with information sufficient to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation. [(6) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.]

Section 6. Therapy Service Limits. (1) Speech-language pathology services [therapy] shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section]:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan].

(2) Physical therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section]:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan].

(3) Occupational therapy services shall be limited to twenty (20) service visits per recipient per calendar year, except as established in subsection (4) of this section]:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan].

(4) A service in excess of the [therapy] limits established in subsection (1), (2), or [through] (3) of this section shall be approved [exceeded] [over-ridden] if the additional service is determined to be medically necessary by:

(a) The department, if the recipient is not enrolled with a managed care organization; or

(b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee [determines that additional visits beyond the limit are medically necessary. (5)(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision:

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(6) The limits established in subsections (1), (2), and (3) of this section shall not apply to a recipient under twenty-one (21) years of age. Except for recipients under age twenty-one (21), prior authorization shall be required for each visit that exceeds the limit established in subsection (1) through (3) of this section].

**(5) Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3) of this section for a recipient who is not enrolled with a managed care organization.**

Section 7. Physician Assistant Services. (1) Except for [With the exception of] a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section

3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862; and

2. Section 2(1)(b) [Sections 2(2) and (3)] of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(8) [(49)] [Section 4(10)] of this administrative regulation;

(b) An anesthesia service;

(c) An obstetrical delivery service; or

(d) A service provided in assistance of surgery.

Section 8. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the same service provided to the same recipient during the same time period via the physicians' [physician] services program.

Section 9. Third Party Liability. A provider shall comply with KRS 205.622.

Section 10. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 11. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with the claim or medical record.

Section 12. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 13. Appeal Rights. [(4)] An appeal of a department decision regarding:

(1) A Medicaid recipient who is not enrolled with a managed

care organization based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563; or

(2) An enrollee based upon an application of this administrative regulation shall be in accordance with 907 KAR 17:010. [(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:674.]

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: March 28, 2014

FILED WITH LRC: March 31, 2014 at 3 p.m.

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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 8:005. Definitions for 907 KAR Chapter 8.**

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for [administrative regulations in] 907 KAR Chapter 8.

Section 1. Definitions. (1) "Adult" means an individual who is at least twenty-one (21) years of age.

(2) "Advanced practice registered nurse" is defined by KRS 314.011(7).

(3) "Child" means an individual who is under twenty-one (21) years of age.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "Electronic signature" is defined by KRS 369.102(8).

(6) "Enrollee" means a recipient who is enrolled with a managed care organization.

(7) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Occupational therapist" is defined by KRS 319A.010(3).

(10) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(11) "Physical therapist" is defined by KRS 327.010(2).

(12) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(13) "Physician" is defined by KRS 311.550(12).

(14) [(12)] "Physician assistant" is defined by KRS 311.840(3).

[(13) "Physical therapist" is defined by KRS 327.010(2).

(14) "Physical therapy assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as

assigned by the supervising physical therapist.]

(15) "Prior authorized" means authorized by:

(a) The department, if the service is for a recipient who is not an enrollee; or

(b) A managed care organization, if the service is for an enrollee.

(16) "Provider" is defined by KRS 205.8451(7).

(17) "Recipient" is defined by KRS 205.8451(9).

(18) "Speech-language pathologist" is defined by KRS 334A.020(3).

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 8:010. Independent occupational therapy service coverage provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding occupational therapy services provided by an independent occupational therapist or occupational therapy assistant working under the direct supervision of an independent occupational therapist.

Section 1. Provider Participation. (1)(a) To be eligible to provide and be reimbursed for an occupational therapy service as an independent provider, a provider shall be:

1. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

2. Except as established in paragraph (b) of this subsection, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

3. Except as provided in subsection (2) of this section, an occupational therapist.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program [if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program].

(2) Occupational therapy services provided in accordance with Section 2 of this administrative regulation by an occupational therapy assistant who works under the direct supervision of an occupational therapist who meets the requirements in subsection (1) of this section shall be reimbursable if the occupational therapist is the biller for the services.

Section 2. Coverage and Limit. (1) The department shall reimburse for an occupational therapy service if:

(a) The service:

1. Is provided:

a. By an:

(i) Occupational therapist who meets the requirements in Section 1(1) of this administrative regulation; or

(ii) Occupational therapy assistant who works under the direct supervision of an occupational therapist who meets the requirements in Section 1(1) of this administrative regulation; and

b. To a recipient;

2. Is ordered for the recipient by a physician, physician assistant, or advanced practice registered nurse for:

a. Maximum reduction of a physical or intellectual disability; or

b. Restoration of a recipient to the recipient's best possible functioning level;

3. Is prior authorized; and

4. Is medically necessary; and

(b) A specific amount of visits is requested for the recipient by an occupational therapist, physician, physician assistant, or an advanced practice registered nurse.

(2)(a) There shall be an annual limit of twenty (20) occupational therapy service visits per recipient per calendar year except as established in paragraph (b) of this subsection.

(b) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(c) Prior authorization by the department shall be required for each service visit that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. No Duplication of Service. (1) The department shall not reimburse for an occupational therapy service provided to a recipient by more than one (1) provider of any program in which occupational therapy services are covered during the same time period.

(2) For example, if a recipient is receiving an occupational therapy service from an occupational therapist enrolled with the Medicaid Program, the department shall not reimburse for the same occupational therapy service provided to the same recipient during the same time period via the home health program.

Section 4. Records Maintenance, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 5. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 8. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights[Appeals]. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### **CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 8:015. Independent occupational therapy service reimbursement provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This

administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding occupational therapy services provided by an independent occupational therapist, or an occupational therapy assistant working under the direct supervision of an independent occupational therapist, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. ~~[(1)]~~ For the department to reimburse for an occupational therapy service under this administrative regulation, the:

~~(1) [(a)]~~ Occupational therapist shall meet the provider requirements established in 907 KAR 8:010; and

~~(2) [(b)]~~ Service shall meet the coverage and related requirements established in 907 KAR 8:010.

~~[(2)] Occupational therapy services provided in accordance with 907 KAR 8:010 and by an occupational therapy assistant who works under the direct supervision of an occupational therapist who meets the requirements in 907 KAR 8:010 shall be reimbursable if the occupational therapist is the biller for the therapy.]~~

Section 2. Reimbursement. (1) The department shall reimburse for an occupational therapy service provided by an:

~~(a) [(4)]~~ Occupational therapist, in accordance with 907 KAR 8:010 and ~~this section [2 of this administrative regulation]~~, at 63.75 percent of the rate for the service listed on the current Kentucky-specific Medicare Physician Fee Schedule; or

~~(b) [(2)]~~ Occupational therapy assistant working for an occupational therapist, in accordance with 907 KAR 8:010 and ~~this section [2 of this administrative regulation]~~, at 37.5 percent of the rate for the service listed on the current Kentucky-specific Medicare Physician Fee Schedule.

~~(2)(a) The current Kentucky-specific Medicare Physician Fee Schedule shall be the Kentucky-specific Medicare Physician Fee Schedule used by the Centers for Medicare and Medicaid Services on the date that the service is provided.~~

~~(b) For example, if an occupational therapy service is provided on a date when the Centers for Medicare and Medicaid Services':~~

~~1. Interim Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the interim Kentucky-specific Medicare Physician Fee Schedule for the year; or~~

~~2. Final Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the final Kentucky-specific Medicare Physician Fee Schedule for the year.~~

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 8:010; and

(2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. Appeal Rights~~[Appeals]~~. A provider may appeal an action by the department as established in 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 8:020. Independent physical therapy service coverage provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding physical therapy services provided by an independent physical therapist or physical therapy assistant working under the direct supervision of an independent physical therapist.

Section 1. Provider Participation. (1)(a) To be eligible to provide and be reimbursed for physical therapy as an independent provider, a provider shall be:

1. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

2. Except as established in paragraph (b) of this subsection, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

3. Except as provided in subsection (2) of this section, a physical therapist.

(b) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

(2) Physical therapy provided in accordance with Section 2 of this administrative regulation by a physical therapist~~[therapy]~~ assistant who works under the direct supervision of a physical therapist who meets the requirements in subsection (1) of this section shall~~[may]~~ be reimbursable if the physical therapist is the biller for the therapy.

Section 2. Coverage and Limit. (1) The department shall reimburse for physical therapy if:

(a) The therapy:

1. Is provided:

a. By a:

(i) Physical therapist who meets the requirements in Section 1(1) of this administrative regulation; or

(ii) Physical therapist~~[therapy]~~ assistant who works under the direct supervision of a physical therapist who meets the requirements in Section 1(1) of this administrative regulation; and

b. To a recipient;

2. Is ordered for the recipient by a physician, physician assistant, or advanced practice registered nurse for:

a. Maximum reduction of a physical or intellectual disability; or

b. Restoration of a recipient to the recipient's best possible functioning level;

3. Is prior authorized; and

4. Is medically necessary; and

(b) A specific amount of visits is requested for the recipient by a physical therapist, physician, physician assistant, or an advanced practice registered nurse.

(2)(a) There shall be an annual limit of twenty (20) physical

therapy visits per recipient per calendar year except as established in paragraph (b) of this subsection.

(b) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(c) Prior authorization by the department shall be required for each therapy visit that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. No Duplication of Service. (1) The department shall not reimburse for physical therapy provided to a recipient by more than one (1) provider of any program in which physical therapy is covered during the same time period.

(2) For example, if a recipient is receiving physical therapy from a physical therapist enrolled with the Medicaid Program, the department shall not reimburse for physical therapy provided to the same recipient during the same time period via the home health program.

Section 4. Records Maintenance, Protection, and Security.

(1)(a) A provider shall maintain a current health record for each recipient;

(b) 1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service; and

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years; and

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part 164.

Section 5. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created,

transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 8. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights[Appeals]. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

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CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### **CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 8:025. Physical therapy service reimbursement provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding physical therapy services provided by an independent physical therapist, or physical therapist[therapy] assistant working under the direct supervision of an independent physical therapist, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. ~~[(1)]~~ For the department to reimburse for physical therapy under this administrative regulation, the:

[(1)](a) Physical therapist shall meet the provider requirements established in 907 KAR 8:020; and

[(2)](b) Physical therapy shall meet the coverage and related

requirements established in 907 KAR 8:020.

**~~[(2) Physical therapy provided in accordance with 907 KAR 8:020 and by a physical therapy assistant who works under the direct supervision of a physical therapist who meets the requirements in 907 KAR 8:020 shall be reimbursable if the physical therapist is the biller for the therapy.]~~**

Section 2. Reimbursement. (1) The department shall reimburse for a physical therapy service provided by a:

(a) ~~[(4)]~~ Physical therapist, in accordance with 907 KAR 8:020 and ~~this section [2 of this administrative regulation]~~, at 63.75 percent of the rate for the service listed on the current Kentucky-specific Medicare Physician Fee Schedule; or

(b) ~~[(2)]~~ Physical ~~therapist[therapy]~~ assistant working for a physical therapist, in accordance with 907 KAR 8:020 and ~~this section [2 of this administrative regulation]~~, at 37.5 percent of the rate for the service listed on the current Kentucky-specific Medicare Physician Fee Schedule.

**(2)(a) The current Kentucky-specific Medicare Physician Fee Schedule shall be the Kentucky-specific Medicare Physician Fee Schedule used by the Centers for Medicare and Medicaid Services on the date that the service is provided.**

**(b) For example, if a physical therapy service is provided on a date when the Centers for Medicare and Medicaid Services':**

**1. Interim Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the interim Kentucky-specific Medicare Physician Fee Schedule for the year; or**

**2. Final Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the final Kentucky-specific Medicare Physician Fee Schedule for the year.**

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 8:020; and
- (2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. **Appeal Rights[Appeals]**. A provider may appeal an action by the department as established in 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, May 13, 2014)

**907 KAR 8:030. Independent speech-language pathology service coverage provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1),

205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding speech-language pathology services provided by an independent speech-language pathologist.

Section 1. Provider Participation. (1) To be eligible to provide and be reimbursed for speech-language pathology services as an independent provider, a provider shall be:

(a) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2)[paragraph (b)] of this section[subsection], currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) A speech-language pathologist.

(2) In accordance with 907 KAR ~~17:015~~~~[17:040]~~, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

Section 2. Coverage and Limit. (1) The department shall reimburse for a speech-language pathology service if:

(a) The service:

1. Is provided:

a. By a speech-language pathologist who meets the requirements in Section 1(1) of this administrative regulation; and

b. To a recipient;

2. Is ordered for the recipient by a physician, physician assistant, or advanced practice registered nurse:

a. Maximum reduction of a physical or intellectual disability; or

b. Restoration of a recipient to the recipient's best possible functioning level;

3. Is prior authorized; and

4. Is medically necessary; and

(b) A specific amount of visits is requested for the recipient by a speech-language pathologist, physician, physician assistant, or an advanced practice registered nurse.

(2)(a) There shall be an annual limit of twenty (20) speech-language pathology service visits per recipient per calendar year, except as established in paragraph (b) of this subsection.

(b) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(c) Prior authorization by the department shall be required for each speech-language pathology service that exceeds the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a speech-language pathology service provided to a recipient by more than one (1) provider of any program in which speech-language pathology service is covered during the same time period.

(2) For example, if a recipient is receiving a speech-language pathology service from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for the speech-language pathology service provided to the same recipient during the same time period via the home health program.

Section 4. Records Maintenance, Protection, and Security.

(1)(a) A provider shall maintain a current health record for each

recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[~~section~~], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part[Chapter] 164.

Section 5. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[~~section~~] may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 8. Auditing Authority. The department shall have the authority to audit any claim, for medical record, or documentation associated with any claim or medical record.

Section 9. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 10. Appeal Rights[Appeals]. (1) An appeal of an

adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Medicaid Services

### Division of Policy and Operations

(As Amended at ARRS, May 13, 2014)

## 907 KAR 8:035. Speech-language pathology service reimbursement provisions and requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.130, 42 U.S.C. 1396d(a)(13)(C)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding speech-language pathology services provided by an independent speech-language pathologist to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a speech-language pathology service under this administrative regulation, the:

(1) Speech-language pathologist shall meet the provider requirements established in 907 KAR 8:030; and

(2) Speech-language pathology service shall meet the coverage and related requirements established in 907 KAR 8:030.

Section 2. Reimbursement. (1) The department shall reimburse for a speech-language pathology service provided by a speech-language pathologist, in accordance with 907 KAR 8:030 and this section[2 of this administrative regulation], at 63.75 percent of the rate for the service listed on the current Kentucky-specific Medicare Physician Fee Schedule.

(2)(a) The current Kentucky-specific Medicare Physician Fee Schedule shall be the Kentucky-specific Medicare Physician Fee Schedule used by the Centers for Medicare and Medicaid Services on the date that the service is provided.

(b) For example, if a speech-language pathology service is provided on a date when the Centers for Medicare and Medicaid Services':

1. Interim Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the interim Kentucky-specific Medicare Physician Fee Schedule for the year; or

2. Final Kentucky-specific Medicare Physician Fee Schedule for a given year is in effect, the reimbursement for the service shall be the amount established on the final Kentucky-specific Medicare Physician Fee Schedule for the year.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in



accordance with this administrative regulation for a service covered pursuant to:

- (1) 907 KAR 8:030; and
- (2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. **Appeal Rights**~~[Appeals]~~. A provider may appeal an action by the department as established in 907 KAR 1:671.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

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CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 10:014. Outpatient hospital service coverage provisions and requirements.**

RELATES TO: KRS 205.520, 42 C.F.R. 447.53

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6310, 205.8453

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds[for the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the Medicaid Program service and coverage policies for outpatient hospital services[provisions relating to outpatient hospital services for which payment shall be made by the medical assistance program on behalf of the categorically needy and medically needy].

Section 1. Definitions. (1) **"Advanced practice registered nurse" is defined by KRS 314.011(7).**

**(2) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).**

**(3) "Certified social worker" means an individual who/;**

**(a) meets the requirements established in KRS 335.080/;**  
**and**

**(b) Has at least a master's degree in social work/.**

**(4)/(3) "Current procedural terminology code" or "CPT code" means a code used for reporting procedures and services performed by medical practitioners and published annually by the American Medical Association in Current Procedural Terminology.**

**(5)/(4) "Comprehensive choices" means a benefit plan for an individual who:**

**(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;**

**(b) Receives services through either:**

1. A nursing facility in accordance with 907 KAR 1:022;
2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3:090;
3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160;
4. The Model Waiver II Program in accordance with 907 KAR

1:595;

5. The Acquired Brain Injury Long Term Care Waiver Program in accordance with 907 KAR 3:210; or

6. The Michelle P. Waiver Program in accordance with 907 KAR 1:835; and

**(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R/.**

**[(2)] "Department" means the Department for Medicaid Services or its designee.**

**(6)/(5)/(3) "Emergency" means that a condition or situation requires an emergency service pursuant to 42 C.F.R. 447.53.**

**(7)/(6)/(4) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).**

**(8)/(7)/(5) "Enrollee" means a recipient who is enrolled with a managed care organization/****"Family choices" means a benefit plan for an individual who:**

**(a) Is covered pursuant to:**

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u-1;

2. 42 U.S.C. 1396a(a)(52) and 1396r-6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. 42 C.F.R. 457.310; and

**(b) Has a designated package code of 2, 3, 4, or 5/.**

**(9)/(8)/(6) "Federal financial participation" is defined by 42 C.F.R. 400.203/****"Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:**

**(a) Caretaker relatives who:**

1. Receive K-TAP and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP and are deprived due to unemployment;

**(b) Individuals aged sixty-five (65) and over who receive SSI and:**

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive SSP and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

**(c) Blind individuals who receive SSI and:**

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

**(d) Disabled individuals who receive SSI and:**

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

**(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass-through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;**

**(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass-through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;**

**(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass-through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022; or**

**(h) Pregnant women/.**

**(10)/(9) "Individualized education program" is defined by 34 C.F.R. 300.320.**

**(11)/(10) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).**

**(12) "Licensed behavior analyst" is defined by KRS**

319C.010(6).

(13) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(14)(11) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(15)(12) "Licensed professional art therapist" is defined by KRS 309.130(2).

(16) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(17) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(18)(13) "Licensed professional counselor associate" is defined by KRS 335.500(4)(335.500(3)).

(19)(14) "Licensed psychological associate" means an individual who:

(a) Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2.(b) Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist.

(20)(15) "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(21)(16) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(22)(17)(7) "Lock-in recipient" means:

(a) A recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677; or

(b) An enrollee enrolled in a managed care organization's lock-in program pursuant to 907 KAR 17:020, Section 8.

(23)(18)(8) "Medical necessity" or "medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(24)(19)(9) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 447.53.

(25)(20)(10) "Provider" is defined by KRS 205.8451(7) "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with an intellectual disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with an intellectual disability patient status criteria established in 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, O, or 1.

(26)(21)(11) "Recipient" is defined by KRS 205.8451(9).

(27)(22)(12) "Unlisted procedure or service" means a procedure or service:

(a) For which there is not a specific CPT code; and

(b) Which is billed using a CPT code designated for reporting unlisted procedures or services.

Section 2. Coverage Criteria. (1)(a) To be covered by the department,:

(a) the following[~~services~~] shall be prior authorized and meet the requirements established in paragraph (b) of this subsection:

1. Magnetic resonance imaging[~~(MRI)~~];

2. Magnetic resonance angiogram[~~(MRA)~~];

3. Magnetic resonance spectroscopy;

4. Positron emission tomography[~~(PET)~~];

5. Cineradiography or[~~/~~] videoradiography;

6. Xeroradiography;

7. Ultrasound subsequent to second obstetric ultrasound;

8. Myocardial imaging;

9. Cardiac blood pool imaging;

10. Radiopharmaceutical procedures;

11. Gastric restrictive surgery or gastric bypass surgery;

12. A procedure that is commonly performed for cosmetic purposes;

13. A surgical procedure that requires completion of a federal consent form; or

14. An unlisted procedure or service.~~;~~and

(b) To be covered by the department, an outpatient hospital service, including a service identified in paragraph (a) of this subsection, shall:

1. Be medically necessary;

2. Be clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and

3. If provided to a lock-in recipient or enrollee, meet the requirements established in paragraph (c) of this subsection.

(c) If the lock-in recipient is:

1. Not an enrollee, the outpatient hospital service shall be:

a. Provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677; or

b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section; or

2. An enrollee, the outpatient hospital service shall be:

a. Provided by the enrollee's designated hospital as established by the managed care organization in which the enrollee is enrolled; or

b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section~~[An outpatient hospital service, including those identified in paragraph (a) of this subsection, shall be:~~

~~1.a. Medically necessary; and~~

~~b. 2. Clinically appropriate pursuant to the criteria established in 907 KAR 3:130; and~~

~~2. 3. For a lock-in recipient who is:~~

~~a. Not an enrollee;~~

~~i. Provided by the lock-in recipient's designated hospital pursuant to 907 KAR 1:677; or~~

~~ii. b. A screening or emergency service that meets the requirements of subsection (6)(a) of this section; or~~

~~b. An enrollee;~~

~~i. Provided by the enrollee's designated hospital as established by the managed care organization in which the enrollee is enrolled; or~~

~~ii. A screening or emergency service that meets the requirements of subsection (6)(a) of this section~~~~[subsection].~~

(2) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service;

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code; or

(c) A service provided to a recipient in an observation bed.

(3) A referring physician, a physician who wishes to provide a given service,or an advanced practice registered nurse, or a

duly-licensed dentist may request prior authorization from the department.

(4) The following covered hospital outpatient services shall be furnished by or under the supervision of a duly licensed physician, or, if applicable, a duly-licensed dentist:

(a) A diagnostic service ordered by a physician;

(b) A therapeutic service~~;~~ except for occupational therapy services as occupational therapy services shall not be covered under this administrative regulation, ordered by a physician];

(c) An emergency room service provided in an emergency situation as determined by a physician; or

(d) A drug, biological, or injection administered in the outpatient hospital setting.

(5) A covered hospital outpatient service for maternity care may be provided by:

(a) An advanced practice registered nurse[~~(APRN)~~] who has

been designated by the Kentucky Board of Nursing as a nurse midwife; or

(b) A registered nurse who holds a valid and effective permit to practice nurse midwifery issued by the Cabinet for Health and Family Services.

(6) The department shall cover:

(a) A screening of a lock-in recipient to determine if the lock-in recipient has an emergency medical condition; or

(b) An emergency service to a lock-in recipient if the department determines that the lock-in recipient had an emergency medical condition when the service was provided.

Section 3. Hospital Outpatient Services Not Covered by the Department. The following services shall not be considered a covered hospital outpatient service:

(1) An item or service that does not meet the requirements established in Section 2(1) of this administrative regulation;

(2) A service for which:

(a) An individual has no obligation to pay; and

(b) No other person has a legal obligation to pay;

(3) A medical supply or appliance, unless it is incidental to the performance of a procedure or service in the hospital outpatient department and included in the rate of payment established by the Medicaid[Medical Assistance] Program for hospital outpatient services;

(4) A drug, biological, or injection purchased by or dispensed to a recipient[patient];

(5) A routine physical examination;[or]

(6) A nonemergency service, other than a screening in accordance with Section 2(6)(a) of this administrative regulation, provided to a lock-in recipient:

(a)[1-] In an emergency department of a hospital; or

(b)[2-] If provided by a hospital that is not the lock-in recipient's designated hospital;

1. Pursuant to 907 KAR 1:677, if the recipient is not an enrollee; or

2. As established by the managed care organization in which the lock-in recipient is enrolled, if the lock-in recipient is an enrollee[(7) Occupational therapy services].

Section 4. Therapy Limits. (1) Speech-language pathology services[therapy] shall be limited to twenty (20) service[s]:

(a) Ten (10) visits per calendar year per[twelve (12) months for a] recipient[ of the Global Choices benefit package; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package].

(2) Physical therapy services shall be limited to twenty (20) service[s]:

(a) Fifteen (15) visits per calendar year per[twelve (12) months for a] recipient[ of the Global Choices benefit package; or

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit package; or

2. Optimum Choices benefit package].

(3) Occupational therapy services shall be limited to twenty (20) service visits per calendar year per recipient.

(4) A service in excess of the limits established in subsection (1), (2), or (3)[and (2)] of this section shall be approved if the service in excess of the limits is determined to be medically necessary by the:

(a) Department, if the recipient is not enrolled with a managed care organization; or

(b) Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee[The therapy limits established in subsections (1) and (2) of this section shall be overridden if the department determines that additional visits beyond the limit are medically necessary.

(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with

the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563].

(5)[(4)] [Except for recipients under age twenty-one (21),] Prior authorization by the department shall be required for each service visit that exceeds the limit established in subsection (1), (2), or (3)[subsections (1) and (2)] of this section for a recipient who is not enrolled with a managed care organization[(5) The limits established in subsections (1) and (2) of this section shall not apply to a recipient under twenty-one (21) years of age].

Section 5. Behavioral Health Services. (1) The following behavioral health services shall be covered:

(a) Intensive outpatient program services;

(b) Partial hospitalization;

(c) Individual outpatient therapy; or

(d) Group outpatient therapy.

(2)(a) Intensive outpatient program services shall be provided by a team[that includes at least two (2) of the following]:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;[or]

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist; or

16. A certified alcohol and drug counselor.

(b) Intensive outpatient program services shall:

1. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

2. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

3. Be provided at least three (3) hours per day at least three (3) days per week; and

4. Include:

a. Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

b. Crisis intervention; or

c. Psycho-education.

(c) During psycho-education the recipient or recipient's family member shall be:

1. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

2. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

(d) An intensive outpatient program services treatment plan shall:

1. Be individualized; and

2. Focus on stabilization and transition to a lesser level of

care.

(e) To provide intensive outpatient program services, an outpatient hospital shall have:

1. Access to a board-certified or board-eligible psychiatrist for consultation;

2. Access to a psychiatrist, other physician, or advanced practiced registered nurse for medication *prescribing and monitoring[management]*;

3. Adequate staffing to ensure a minimum recipient-to-staff ratio of *ten (10)[four (4)]* recipients to one (1) staff person;

4. The capacity to provide services utilizing a recognized intervention protocol based on *nationally accepted treatment[recovery]* principles;

5. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

6. The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

7. Demonstrated experience in serving individuals with behavioral health disorders;

8. The administrative capacity to ensure quality of services;

9. A financial management system that provides documentation of services and costs; and

10. The capacity to document and maintain individual case records.

*[(f) Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of four (4) to one (1).]*

(3)(a) Partial hospitalization shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;*or*

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;*or*

16. A certified alcohol and drug counselor.

(b) Partial hospitalization shall be a short-term (average of four (4) to six (6) weeks), less than twenty-four (24)-hour, intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder, a mental health disorder, or co-occurring mental health and substance use disorders.

(c) Partial hospitalization may be provided to an adult or a child.

(d) Admission criteria for partial hospitalization shall be based on an inability to adequately treat the recipient through community-based therapies or intensive outpatient services.

(e) A partial hospitalization program shall consist of individual outpatient therapy, group outpatient therapy, family outpatient therapy, or medication management.

(f)1. The department shall not reimburse for educational, vocational, or job training services *[that may be]* provided as part of partial hospitalization.

2. An outpatient hospital's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction which are not Medicaid billable or reimbursable.

3. The department shall not reimburse for services identified in a Medicaid-eligible child's individualized education program.

(g) Partial hospitalization shall typically be:

1. Provided for *at least four (4)[a lesser number of]* hours per day*[and days per week than day treatment]*; and

2. Focused on one (1) primary presenting problem (i.e. substance use, sexual reactivity, *or another problem[etc.]*).

(h) An outpatient hospital's partial hospitalization program shall:

1. Include the following personnel for the purpose of providing medical care if necessary:

a. An advanced practice registered nurse;

b. A physician assistant or physician available on site;

and

c. A board-certified or board-eligible psychiatrist available for consultation; and

2. Have the capacity to:

a. Provide services utilizing a recognized intervention protocol based on *nationally accepted treatment[recovery]* principles;

b. Employ required practitioners and coordinate service provision among rendering practitioners; and

c. Provide the full range of services included in the scope of partial hospitalization established in this subsection.

(4)(a) Individual outpatient therapy shall be provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist;*or*

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; *or*

17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst.

(b) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; *or*

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day.

(5)(a) Group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor;

11. A certified social worker working under the supervision of a licensed clinical social worker;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist; or

13. A physician assistant working under the supervision of a physician;

14. A licensed professional art therapist;

15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist;

16. A licensed behavior analyst; or

17. A licensed assistant behavior analyst.

(b)1. Group outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring disorders[related disorder];

b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

c. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed twelve (12)[eight (8)] individuals in size;

d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

f. Not exceed three (3) hours per day.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of a group receiving group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

**Section 6.** No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving speech-language pathology services[therapy] from a speech-language pathologist enrolled with the Medicaid Program, the department shall not reimburse for speech-language pathology services[therapy] provided to the same recipient during the same time period via the outpatient hospital services program.

**Section 7.[6.]** Records Maintenance, Protection, and Security. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign

the health record on the date that the individual provided the service.

(2)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part 164.

**Section 8.[7.]** Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

**Section 9.[8.]** Third Party Liability. A provider shall comply with KRS 205.622.

**Section 10.[9.]** Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, **immediately upon request**, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature[**immediately upon request**].

**Section 11.[10.]** Auditing Authority. The department shall have the authority to audit any claim,or medical record, or documentation associated with any claim or medical record.

**Section 12.[11.]** Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

**Section 13. Appeal Rights[12.][Appeals].** (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in

accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 13:005. Definitions for 907 KAR Chapter 13.**

RELATES TO: KRS 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any(a) requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 13.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Electronic signature" is defined by KRS 369.102(8).

(3) "Enrollee" means a recipient who is enrolled with a managed care organization.

(4) "Home health agency" or "HHA" means a Medicare and Medicaid-certified agency licensed in accordance with 902 KAR 20:081.

(5) "Immediate family member" is defined by KRS 205.8451(3).

(6) "Licensed practical nurse" is defined by KRS 314.011(9).

(7) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(8) "Medically necessary" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(9) "Prior authorized" means authorized by:

(a) The department, if the service is for a recipient who is not an enrollee; or

(b) A managed care organization, if the service is for an enrollee.

(10) "Private duty nursing agency" means an agency licensed in accordance with 902 KAR 20:370.

(11) "Provider" is defined by KRS 205.8451(7).

(12) "Recipient" is defined by KRS 205.8451(9).

(13) "Registered nurse" is defined by KRS 314.011(5).

LAWRENCE KISSNER, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

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**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Medicaid Services  
Division of Policy and Operations  
(As Amended at ARRS, May 13, 2014)**

**907 KAR 13:010. Private duty nursing service coverage provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.80, 440.330, 42 U.S.C. 1396u-7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding private duty nursing services.

Section 1. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a provider shall be:

(a) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Except as established in subsection (2) of this section, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) 1. A private duty nursing agency; or

2. A licensed home health agency ~~[licensed]~~ [in accordance with 902 KAR 20:370 to provide private duty nursing services].

(2) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program ~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~.

Section 2. Coverage and Limit. (1) The department shall reimburse for a private duty nursing service or supply if the service or supply is:

(a) Provided:

1. By a:

a. Registered nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1[3] of this administrative regulation; or

(ii) Home health agency that meets the requirements established in Section 1[3] of this administrative regulation; or

b. Licensed practical nurse employed by a:

(i) Private duty nursing agency that meets the requirements established in Section 1[3] of this administrative regulation; or

(ii) Home health agency that meets the requirements established in Section 1[3] of this administrative regulation;

2. To a recipient in the recipient's home, except as provided in subsection (2) of this section; and

3. Under the direction of the recipient's physician in accordance with 42 C.F.R. 440.80;

(b) 1. Prescribed for the recipient by a physician; and

2. Stated in the recipient's plan of treatment developed by the prescribing physician;

(c) Established as being needed for the recipient in the recipient's home;

(d) Prior authorized; and

(e) Medically necessary.

(2) A private duty nursing service may be covered in a setting other than in the recipient's home, if the service is provided during a normal life activity of the recipient that requires the recipient to be out of his or her home.

(3)(a) There shall be a[an annual] limit of private duty nursing services per recipient of 2,000 hours per twelve (12) consecutive month period.

(b) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limit are determined

to be medically necessary.

Section 3. No Duplication of Service. The department shall not reimburse for any of the following services provided[providing] during the same time that a private duty nursing service is provided to a recipient:

- (1) A personal care service;
- (2) A skilled nursing service or visit; or
- (3) A home health aide service.

Section 4. Conflict of Interest. The department shall not reimburse for a private duty nursing service provided to a recipient if the individual providing the service is:

- (1) An immediate family member of the recipient; or
- (2) A legally responsible individual who maintains his or her primary residence with the recipient.

Section 5. Records Maintenance, Protection, and Security. (1)(a) A provider shall maintain a current health record for each recipient.

(b)1. A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

2. The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(2)(a) A provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service.

(b) If the United States Department of Health and Human Services secretary requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(3) A provider shall comply with 45 C.F.R. Part 164.

Section 6. Medicaid Program Participation Compliance. (1) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

Section 7. Third Party Liability. A provider shall comply with KRS 205.622.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature [immediately upon request].

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeal Rights[Appeals]. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

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CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, May 13, 2014)

**907 KAR 13:015. Private duty nursing service or supply reimbursement provisions and requirements.**

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Department for Medicaid Services' reimbursement provisions and requirements regarding private duty nursing services and supplies.

Section 1. General Requirements. For the department to reimburse for a private duty nursing service or supply under this administrative regulation, the:

(1) Provider shall meet the provider requirements established in 907 KAR 13:010; and

(2) The service or supply shall meet the coverage and related requirements established in 907 KAR 13:010.

Section 2. Reimbursement. The department shall:

(1) Reimburse for private duty nursing services at a rate of nine (9) dollars per fifteen (15) minutes, which shall constitute one (1) unit[and]

(2) Not reimburse for more than:

(a) Ninety-six (96) units per recipient per twenty-four (24) hour period; or

(b) 8,000 units per twelve (12) consecutive month period per recipient; and

(3) Reimburse for supplies as established on the Private Duty Nursing Supplies Fee Schedule.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse the same amount as established in this administrative regulation for a service or supply covered pursuant to 907 KAR 13:010 and this administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department's reimbursement for services or supplies pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 5. Appeal Rights~~[Appeals]~~. A provider may appeal an action by the department as established in 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) "Private Duty Nursing Supplies Fee Schedule", April 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

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# CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Commissioner's Office

(As Amended at ARRS, May 13, 2014)

## 907 KAR 15:005. Definitions for 907 KAR Chapter 15.

RELATES TO: 194A.025(3)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the definitions for 907 KAR Chapter 15.

Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Approved behavioral health services provider" means a provider that is:

(a) A physician;

(b) A psychiatrist;

(c) An advanced practice registered nurse;

(d) A physician assistant;

(e) A licensed psychologist;

(f) A licensed psychological practitioner;

(g) A licensed clinical social worker;

(h) A licensed professional clinical counselor;

(i) A licensed marriage and family therapist;

(j) A licensed psychological associate;

(k) A marriage and family therapy associate;

(l) A certified social worker;

(m) A licensed professional counselor associate;

(n) A licensed professional art therapist; or

(o) A licensed professional art therapist associate.

(3) "Billing provider" means the individual who or group of individual providers that~~[entity who]~~:

(a) Is authorized to bill the department or a managed care organization for a service; and

(b) Is eligible to be reimbursed by the department or a managed care organization for a service.

(4)~~[(3)]~~ "Certified social worker" means an individual who~~[(~~:

(a)~~]~~ meets the requirements established in KRS 335.080~~[(~~; and

(b) ~~Has at least a master's degree in social work~~.

(5)~~[(4)]~~ "Community support associate" means an individual who meets the community support associate requirements established in 908 KAR 2:250.

(5)~~]~~ "Department" means the Department for Medicaid Services or its designee.

(6)~~[(5)]~~[(6)] "Electronic signature" is defined by KRS 369.102(8).

(7)~~[(6)]~~[(7)] "Enrollee" means a recipient who is enrolled with a managed care organization.

(8)~~[(7)]~~[(8)] "Face-to-face" means occurring:

(a) In person; or

(b) Via a real-time, electronic communication that involves two (2) ~~[~~way interactive video and audio communication.

(9)~~[(8)]~~[(9)] "Family peer support specialist" means an individual who meets the requirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

(10)~~[(9)]~~[(10)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

(11)~~[(10)]~~[(11)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(12) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(13) "Licensed clinical social worker" means an individual who meets the licensed clinical social worker requirements established in KRS 335.100.

(14)~~[(11)]~~[(12)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

(15)~~[(12)]~~[(13)] "Licensed professional art therapist" is defined by KRS 309.130(2).

(16) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

(17) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(18)~~[(13)]~~[(14)] "Licensed professional counselor associate" is defined by KRS 335.500(4)~~[335.500(3)]~~.

(19)~~[(14)]~~[(15)] "Licensed psychological associate" means an individual who:

(a) 1. Currently possesses a licensed psychological associate license in accordance with KRS 319.010(6); and

2.~~[(b)]~~ Meets the licensed psychological associate requirements established in 201 KAR Chapter 26; or

(b) Is a certified psychologist.

(20)~~[(15)]~~[(16)] "Licensed psychological practitioner" means an individual who:

(a) Meets the requirements established in KRS 319.053; or

(b) Is a certified psychologist with autonomous functioning.

(21)~~[(16)]~~[(17)] "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(22)~~[(17)]~~[(18)] "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(23)~~[(18)]~~[(19)] "Marriage and family therapy associate" is defined by KRS 335.300(3).

(24)~~[(19)]~~[(20)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in



accordance with 907 KAR 3:130.

~~(25)~~~~(20)~~~~(24)~~ "Peer support specialist" means an individual who meets the peer specialist qualifications established in 908 KAR 2:220.

~~(26)~~~~(24)~~ **"Person-centered service plan" means a plan of services for a recipient that meets the requirements established in 42 C.F.R. 441.540.**

~~(27)~~~~(22)~~ "Physician" is defined by KRS 205.510(11)~~and 42 C.F.R. 405.2401(b)~~.

~~(28)~~~~(23)~~ "Physician assistant" is defined by KRS 311.840(3)~~and 42 C.F.R. 405.2401(b)~~.

~~(29)~~~~(24)~~ "Provider" is defined by KRS 205.8451(7).

~~(30)~~~~(25)~~ "Provider abuse" is defined by KRS 205.8451(8).

~~(31)~~~~(26)~~ **"Provider group" means a group of more than one (1) individually licensed practitioners who form a business entity to:**

**(a) Render health services; and**

**(b) Bill the Medicaid Program for services rendered to Medicaid recipients.**

~~(32)~~~~(27)~~ **"Qualified mental health professional" means an individual who meets the requirements established in KRS 202A.011(12).**

~~(28)~~ "Recipient" is defined by KRS 205.8451(9).

~~(32)~~~~(29)~~~~(27)~~ "Recipient abuse" is defined by KRS 205.8451(10).

~~(33)~~~~(30)~~~~(28)~~ "Registered nurse" is defined by KRS 314.011(5).

~~(34)~~~~(31)~~~~(29)~~ "Youth peer support specialist" means an individual who meets the requirements established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

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**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by independent providers.**

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed behavioral health professionals who are independently enrolled in the Medicaid Program or practitioners working for or under the supervision of the independent providers.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary;

(b) Provided:

1. To a recipient; and

2. By a:

a. Provider who meets the provider participation requirements established in Section 2 of this administrative regulation; or

b. Practitioner working under the supervision of a provider who meets the provider participation requirements established in Section 2 of this administrative regulation; and

(c) Billed to the department by the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner in accordance with Section 3 of this administrative regulation.

(2)(a) Direct contact between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in a recipient's treatment plan;~~and~~

(b) Provided in accordance with a recipient's treatment plan;  
**and**

(c) Provided on a regularly scheduled basis except for a screening~~for~~ assessment~~or crisis intervention~~; ~~and~~

~~(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient].~~

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a provider shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(2) In accordance with 907 KAR ~~17:015~~~~17:040~~, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the ~~fee-for-service~~ Medicaid Program~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program].~~

(3) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use ~~disorders~~~~disorder~~.

(2) The following shall be covered under this administrative regulation in ~~accordance~~~~according~~ with the corresponding following requirements:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a





1. A licensed psychologist;  
 2. A licensed professional clinical counselor;  
 3. A licensed clinical social worker;  
 4. A licensed marriage and family therapist;  
 5. A physician;  
 6. A psychiatrist;  
 7. An advanced practice registered nurse;  
 8. A licensed psychological practitioner;  
 9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;  
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;  
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;  
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or  
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;  
14. A licensed professional art therapist; or  
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;  
~~14. Peer support specialist working under the supervision of a mental health professional;~~  
~~15. A family peer support specialist working under the supervision of a mental health professional; or~~  
~~16. A youth peer support specialist working under the supervision of a mental health professional;~~  
(l)(m) Comprehensive community support services provided by a team of at least two (2) of the following:  
 1. A licensed psychologist;  
 2. A licensed professional clinical counselor;  
 3. A licensed clinical social worker;  
 4. A licensed marriage and family therapist;  
 5. A physician;  
 6. A psychiatrist;  
 7. An advanced practice registered nurse;  
 8. A licensed psychological practitioner;  
 9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;  
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;  
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;  
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or  
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;  
14. A licensed professional art therapist;  
15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service;  
16. A licensed behavior analyst; or  
17. A licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service;  
~~14. A peer support specialist working under the supervision of a mental health professional;~~  
~~15. A family peer support specialist working under the supervision of a mental health professional;~~

~~16. A youth peer support specialist working under the supervision of a mental health professional; or~~  
~~17. A community support associate;~~  
(m)(n) Peer support provided by:  
 1. A peer support specialist working under the supervision of an approved behavioral health service provider[a qualified mental health professional]; or  
 2. ~~A family peer support specialist working under the supervision of a mental health professional; or~~  
 3. A youth peer support specialist working under the supervision of an approved behavioral health service provider[a qualified mental health professional]; or  
(n)(o) Parent or family peer support provided by:  
 1. ~~A peer support specialist working under the supervision of a mental health professional;~~  
 2. a family peer support specialist working under the supervision of an approved behavioral health service provider[a qualified mental health professional];  
(o)(p) Intensive outpatient program provided by:  
 1. A licensed psychologist;  
 2. A licensed professional clinical counselor;  
 3. A licensed clinical social worker;  
 4. A licensed marriage and family therapist;  
 5. A physician;  
 6. A psychiatrist;  
 7. An advanced practice registered nurse;  
 8. A licensed psychological practitioner;  
 9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;  
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;  
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;  
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or  
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;  
14. A licensed professional art therapist; or  
15. A licensed professional art therapist associate; or  
(p)(q) Therapeutic rehabilitation program provided by:  
 1. A licensed psychologist;  
 2. A licensed professional clinical counselor;  
 3. A licensed clinical social worker;  
 4. A licensed marriage and family therapist;  
 5. A physician;  
 6. A psychiatrist;  
 7. An advanced practice registered nurse;  
 8. A licensed psychological practitioner;  
 9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;  
 10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;  
 11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;  
 12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or  
 13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service  
14. A licensed professional art therapist; or

**15. A licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service[or**

**3. A youth peer support specialist working under the supervision of a mental health professional].**

(3)(a) A screening shall:

1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring **disorders[disorder];**

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder, ~~for~~ substance use disorder, **or co-occurring disorders;**

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a **clinical[clinic]** disorder or service need;

3. **Include[including]** working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall include:

1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

2. Interpretation and a written report of testing results.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals **[with behavioral health disorders];**

3. Shall be provided:

a. ~~On-site at the provider's[In an] office[, home, or community setting where the individual is experiencing the crisis];~~

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include verbal de-escalation, risk assessment, or cognitive therapy; and

5. Shall be followed by a referral to noncrisis services if applicable.

(e)1. Service planning shall **involve:**

**a. Assisting a recipient in creating an individualized plan for services needed for maximum reduction of an intellectual disability; and**

**b. Restoring a recipient's functional level to the recipient's best possible functional level[consist of assisting a recipient in creating an individualized plan for services needed to maintain functional stability or return to stability as soon as possible in order to avoid out-of-home care].**

2. A service plan:

a. Shall be directed by the recipient; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day **unless additional time is medically necessary.**

(g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

**3. Family outpatient therapy shall:**

**a. Be provided to promote the:**

**(i) Health and wellbeing of the individual; or**

**(ii) Recovery from a substance use disorder, mental health disorder, or co-occurring related disorders[disorder]; and**

**b. Not exceed three (3) hours per day per individual unless additional time is medically necessary.**

(h)1. Group outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance related disorder;

b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

c. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed ~~twelve (12)~~ **eight (8)** individuals in size;

d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

f. Not exceed three (3) hours per day **per recipient unless additional time is medically necessary.**

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of ~~a group receiving~~ group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan; **[and]**

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; **and**

**c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.**

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an

individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to ~~assess~~**[assessing]** an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

c. Referring a recipient to:

(i) Therapy; or

(ii) Other additional services to address substance use if the recipient is determined to need other additional services.

(k) ~~[Medication-assisted treatment for a substance use disorder]:~~

~~1. Shall include:~~

~~a. Any opioid addiction treatment that includes a United States Food and Drug Administration-approved medication for the detoxification or maintenance treatment of opioid addiction along with counseling or other supports;~~

~~b. Comprehensive maintenance;~~

~~c. Medical maintenance;~~

~~d. Interim maintenance;~~

~~e. Detoxification; or~~

~~f. Medically supervised withdrawal;~~

~~2. May be provided in:~~

~~a. An opioid treatment program;~~

~~b. A medication unit affiliated with an opioid treatment program;~~

~~c. A physician's office except for methadone; or~~

~~d. Other community setting; and~~

~~3. Shall increase the likelihood for cessation of illicit opioid use or prescription opioid abuse.~~

~~(l)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:~~

~~a. An emotional disability or neurobiological or substance use disorder; and~~

~~b. A high risk of out-of-home placement due to a behavioral health issue.~~

~~2. Day treatment services shall:~~

~~a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health, or co-occurring mental health and substance use disorder);~~

~~b. Have unified policies and procedures that:~~

~~(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and~~

~~(ii) Have been approved by the recipient's local education authority and the day treatment provider;~~

~~c. Include:~~

~~(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;~~

~~(ii) Behavior management and social skill training;~~

~~(iii) Independent living skills that correlate to the age and development stage of the recipient; or~~

~~(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and~~

~~d. Be provided:~~

~~(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);~~

~~(ii) On school days and during scheduled breaks;~~

~~(iii) In coordination with the recipient's individual educational plan if the recipient has an individual educational plan;~~

~~(iv) Under the supervision of **an approved behavioral health services provider** ~~a qualified mental health professional~~ **[licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision]; and**~~

~~(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.~~

~~3. To provide day treatment services, a provider shall have:~~

~~a. The capacity to employ staff authorized to provide day treatment services in accordance with subsection (2)(l) of this section and to coordinate the provision of services among team members;~~

~~b. The capacity to provide the full range of residential crisis stabilization services as stated in subparagraph 1 of this paragraph;~~

~~c. Demonstrated experience in serving individuals with behavioral health disorders;~~

~~d. The administrative capacity to ensure quality of services;~~

~~e. A financial management system that provides documentation of services and costs;~~

~~f. The capacity to document and maintain individual case records; and~~

~~g. Knowledge of substance use disorders.~~

~~4.] Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.~~

~~(l)(m)1. Comprehensive community support services shall:~~

~~a. Be activities necessary to allow an individual to live with maximum independence in **the** community ~~[-integrated housing];~~~~

~~b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan; **and**~~

~~c. Include:~~

~~(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; **[or]**~~

~~(ii) Teaching parenting skills;~~

~~(iii) Teaching community resource access and utilization;~~

~~(iv) Teaching emotional regulation skills;~~

~~(v) Teaching crisis coping skills;~~

~~(vi) Teaching how to shop;~~

~~(vii) Teaching about transportation;~~

~~(viii) Teaching financial management;~~

~~(ix) **or** Developing and enhancing interpersonal skills; **or**~~

~~(x) Improving daily living skills **and**~~

~~c. Meet the requirements for comprehensive community support services established in 908 KAR 2:250].~~

~~2. [3.] To provide comprehensive community support services, a provider shall:~~

~~a. Have:~~

~~a.] the capacity to employ staff authorized **pursuant to 908 KAR 2:250** to provide comprehensive community support services in accordance with subsection (2)(m) of this section and to coordinate the provision of services among team members; **and**~~

~~b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250 **[The capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;**~~

~~c. Demonstrated experience in serving individuals with behavioral health disorders;~~

~~d. The administrative capacity to ensure quality of services;~~

~~e. A financial management system that provides documentation of services and costs; and~~

~~f. The capacity to document and maintain individual case records].~~

~~(m)(n)1. Peer support services shall:~~

~~a. Be social and emotional support that is provided by an individual who is **employed by a provider group and who has experienced** ~~[experiencing]~~ a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;~~

~~b. Be an evidence-based practice;~~

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer~~[or parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services]~~ who has been trained and certified in accordance with 908 KAR 2:220 or 908 KAR 2:240;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and

f. Be identified in each recipient's treatment plan.

2. To provide peer support services a provider shall:

a. Have demonstrated the capacity to provide the core elements of peer support services for the behavioral health population being served including the age range of the population being served;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220 or 908 KAR 2:240; and

c. Use an approved behavioral health services provider[a qualified mental health professional] to supervise peer support specialists[;]

d. ~~Have the capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (2)(n) of this section and to coordinate the provision of services among team members;~~

e. ~~Have the capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;~~

f. ~~Have demonstrated experience in serving individuals with behavioral health disorders;~~

g. ~~Have the administrative capacity to ensure quality of services;~~

h. ~~Have a financial management system that provides documentation of services and costs; and~~

i. ~~Have the capacity to document and maintain individual case records].~~

(n)(e)1. Parent or family peer support services shall:

a. Be emotional support that is provided by a parent or family member, who is employed by a provider group, of a child who has experienced[is experiencing] a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and

f. Be identified in each recipient's treatment plan.

2. To provide parent or family peer support services a provider shall:

a. Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;

b. Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230; and

c. Use an approved behavioral health services provider[a qualified mental health professional] to supervise family peer support specialists[;]

d. ~~Have the capacity to employ staff authorized to provide comprehensive community support services in accordance~~

~~with subsection (2)(n) of this section and to coordinate the provision of services among team members;~~

e. ~~Have the capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;~~

f. ~~Have demonstrated experience in serving individuals with behavioral health disorders;~~

g. ~~Have the administrative capacity to ensure quality of services;~~

h. ~~Have a financial management system that provides documentation of services and costs; and~~

i. ~~Have the capacity to document and maintain individual case records].~~

(o)(p)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) Adequate staffing to ensure a minimum recipient-to-staff ratio of fifteen (15) recipients to one (1) staff person;

(iv) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment[recovery] principles;

(v) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(vi) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vii) Demonstrated experience in serving individuals with behavioral health disorders;

(viii) The administrative capacity to ensure quality of services;

(ix) A financial management system that provides documentation of services and costs; and

(x) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10)[fifteen (15)] to one (1).

(p)(q)1. A therapeutic rehabilitation program shall be:

**a. A rehabilitative service for an:**

**(i) Adult with a serious mental illness; or**

**(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; and**

**b. Designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level.**

**2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.**

**3. A therapeutic rehabilitation program shall:**

**a. Be delivered using a variety of psychiatric rehabilitation techniques;**

**b. Focus on:**

**(i) Improving daily living skills;**

**(ii) Self-monitoring of symptoms and side effects;**

**(iii) Emotional regulation skills;**

**(iv) Crisis coping skill; and**

**(v) Interpersonal skills; and**

**c. Be delivered individually or in a group.**

(4)(a) The following requirements shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder:

1. The licensing requirements established in 908 KAR 1:370;

2. The physical plant requirements established in 908 KAR 1:370;

3. The organization and administration requirements established in 908 KAR 1:370;

4. The personnel policy requirements established in 908 KAR 1:370;

5. The quality assurance requirements established in 908 KAR 1:370;

6. The clinical staff requirements established in 908 KAR 1:370;

7. The program operational requirements established in 908 KAR 1:370; and

8. The outpatient program requirements established in 908 KAR 1:370.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of ~~[assessment performed at the time of]~~ a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

**(8)(a) The term "billing provider" used in this administrative regulation shall include:**

**1. The individual provider that is referenced; or**

**2. A provider group that includes the individual provider that is referenced.**

**(b) As an example of paragraph (a) of this subsection, a licensed psychologist who is a billing provider shall include:**

**1. The licensed psychologist as an individual provider; or**

**2. A provider group of licensed psychologists that includes the licensed psychologist.**

**(c) The services established in this administrative regulation shall be provided by a provider enrolled in the Medicaid Program as:**

**1. An individual provider; or**

**2. A provider group.**

Section 4. Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison;

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as specified in Section 3(3)(k) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a local health department.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis; and

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider;

k. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:



- a. Screening;
- b. Assessment;
- c. Disposition; and
- d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs; and
- 3. A complete history including mental status and previous treatment;
- 4. An identification sheet;
- 5. A consent for treatment sheet that is accurately signed and dated; and
- 6. The individual's stated purpose for seeking services; and[-]
- (b) Be:
  - 1. Maintained in an organized central file;
  - 2. Furnished to the:
    - a. Cabinet for Health and Family Services upon request; or
    - b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
  - 3. Made available for inspection and copying by:
    - a. Cabinet for Health and Family Services' personnel; or
    - b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
  - 4. Readily accessible; and
  - 5. Adequate for the purpose establishing the current treatment modality and progress of the recipient.[-]
- (4) Documentation of a screening shall include:
  - (a) Information relative to the individual's stated request for services; and
  - (b) Other stated personal or health concerns if other concerns are stated.
- (5)(a) A provider's notes regarding a recipient shall:
  - 1. Be made within forty-eight (48) hours of each service visit;
  - 2. Describe the:
    - a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
    - b. Therapist's intervention;
    - c. Changes in the treatment plan if changes are made; and
    - d. Need for continued treatment if continued treatment is needed.
- (b)1. Any edit to notes shall:
  - a. Clearly display the changes;
  - b. Be initialed and dated.
- 2. Notes shall not be erased or illegibly marked out.
- (c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional[providing the service].
- 2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervision professional reflecting consultations with the practitioner working under supervision concerning the:
  - a. Case; and
  - b. Supervising professional's evaluation of the services being provided to the recipient.
- (6) Immediately following a screening of a recipient, the provider shall perform a disposition related to:
  - (a) A provisional[An appropriate] diagnosis;
  - (b) A referral for further consultation and disposition, if applicable; or[and]
- (c)1. If applicable, termination of services and referral to an outside source for further services; or
- 2. If applicable, termination of services without a referral to further services.
- (7)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.
- (b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.
- (8)(a) Notes regarding services to a recipient shall:
  - 1. Be organized in chronological order;
  - 2. Be dated;
  - 3. Be titled to indicate the service rendered;
  - 4. State a starting and ending time for the service; and
  - 5. Be recorded and signed by the rendering provider and

include[included] the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

- 1. Be recorded in the notes; and
- 2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient within ten (10) business days of the transfer or referral.

(12)(a) If a provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of the provider, the health records of the provider shall:

1. Remain the property of the provider; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

(13)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A provider shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall[be]:

- 1. Be treated as confidential;
- 2. Not be disclosed to an unauthorized individual; and
- 3. Be disclosed to an authorized representative of:

- a. The department; or
- b. Federal government;

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service;
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A provider shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

- 1. Interpreted to be fraud or abuse; and
- 2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the provider accepts the payment:

- 1. The payment shall be considered payment in full;
- 2. No bill for the same service shall be given to the recipient; and
- 3. No payment from the recipient for the same service shall be accepted by the provider.

(b)1. A provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Provider makes the recipient aware in advance of providing the service that the:

- (i) Recipient is liable for the payment; and
- (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

- a. Provider shall not bill the department for the service; and
- b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

- (ii) Make any payment to the provider regarding the service.

(4)(a) A provider attests by the provider's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

- 1. Department or its designee;
- 2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
- 3. Kentucky Office of Attorney General or its designee;
- 4. Kentucky Office of the Auditor for Public Accounts or its designee;
- 5. United States General Accounting Office or its designee;

(c) If a provider receives a request from the department to provide a claim or related information or related documentation or record for ~~auditing~~Medicaid RAC Program purposes, the provider shall provide the ~~requested~~request information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a provider shall result in the suspension or termination of the provider from Medicaid Program participation.

Section 8. Third Party Liability. A provider shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

- 1. Be completed and executed by each individual using an electronic signature;
- 2. Attest to the signature's authenticity; and
- 3. Include a statement indicating that the individual has been

notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

- 1. A copy of the provider's electronic signature policy;
- 2. The signed consent form; and
- 3. The original filed signature immediately upon request.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;
- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

#### **CABINET FOR HEALTH AND FAMILY SERVICES**

##### **Department for Medicaid Services**

##### **Division of Policy and Operations**

**(As Amended at ARRS, May 13, 2014)**

**907 KAR 15:015. Reimbursement provisions and requirements for behavioral health services provided by independent providers.**

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed behavioral health professionals who are independently enrolled in the Medicaid Program as Medicaid providers, or behavioral health service practitioners working for or under supervision of the independent behavioral health service providers, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:

- (1) Medically necessary;
- (2) Provided:
- (a) To a recipient; and

(b) By a:

1. Provider who meets the provider participation requirements established in 907 KAR 15:010; or

2. Practitioner working under the supervision of a provider who meets the provider participation requirements established in 907 KAR 15:010;

(3) A service covered in accordance with 907 KAR 15:010; and

(4) Billed to the department by the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be fifteen (15) minutes in length or the unit amount identified in the corresponding current procedural terminology code.

(2) The rate per unit for a screening shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;~~or~~
4. Licensed marriage and family therapist; or

**5. Licensed professional art therapist; or**

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~or~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;~~or~~

**6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service.**

(3) The rate per unit for an assessment shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;~~or~~
4. Licensed marriage and family therapist;

**5. Licensed professional art therapist; or**

**6. Licensed behavior analyst; or**

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;~~or~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;

**6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or**

**7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.**

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

(b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or

(c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service.

(5) The rate per unit for screening, brief intervention, and referral to treatment shall be **as established on the Non-Medicare Services Fee Schedule**;

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Physician; or~~
- ~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

- ~~1. An advanced practice registered nurse; or~~
- ~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Licensed professional clinical counselor;~~
- ~~2. Licensed clinical social worker;~~
- ~~3. Licensed psychological practitioner; or~~
- ~~4. Licensed marriage and family therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of~~

~~a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service].~~

(6) The rate per unit for crisis intervention shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner; ~~[or]~~
4. Licensed marriage and family therapist; or

5. Licensed professional art therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; ~~[or]~~

5. Physician assistant working for a physician if the physician is the billing provider for the service; ~~or~~

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service];

~~6. Peer support specialist working under the supervision of a mental health professional;~~

~~7. Family peer support specialist working under the supervision of a mental health professional; or~~

~~8. Youth peer support specialist working under the supervision of a mental health professional].~~

(7) The rate per unit for service planning shall be as established on the Non-Medicare Services Fee Schedule];

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Physician; or~~
- ~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

- ~~1. An advanced practice registered nurse; or~~
- ~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Licensed professional clinical counselor;~~
- ~~2. Licensed clinical social worker;~~
- ~~3. Licensed psychological practitioner; or~~
- ~~4. Licensed marriage and family therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Marriage and family therapy associate working under~~

~~the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service].~~

(8) The rate per unit for individual outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner; ~~[or]~~
4. Licensed marriage and family therapist;

5. Licensed professional art therapist; or

6. Licensed behavior analyst; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; ~~[or]~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;

6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or

7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.

(9) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;

3. Licensed psychological practitioner; ~~or~~
4. Licensed marriage and family therapist; or
- 5. Licensed professional art therapist; or**

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;
3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;
4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; ~~or~~
5. Physician assistant working for a physician if the physician is the billing provider for the service; ~~or~~

**6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service.**

(10) The rate per unit for group outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner; ~~or~~
4. Licensed marriage and family therapist;
- 5. Licensed professional art therapist; or**
- 6. Licensed behavior analyst; or**

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;
2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;
3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;
4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; ~~or~~
5. Physician assistant working for a physician if the physician is the billing provider for the service;

**6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or**

**7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.**

(11) The rate per unit for collateral outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if

provided by a:

1. Physician; or
2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or
2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner; ~~or~~
4. Licensed marriage and family therapist;
- 5. Licensed professional art therapist; or**
- 6. Licensed behavior analyst; or**

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; ~~or~~

5. Physician assistant working for a physician if the physician is the billing provider for the service;

**6. Licensed professional art therapist associate working under the supervision of a licensed professional art therapist if the licensed professional art therapist is the billing provider for the service; or**

**7. Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst if the licensed behavior analyst is the billing provider for the service.**

(12) The rate per unit for ~~medication-assisted treatment for a substance use disorder~~ shall be:

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Physician; or~~
- ~~2. Psychiatrist; or~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by an advanced practice registered nurse.~~

~~(13) The rate per unit for~~ day treatment shall be **as established on the Non-Medicare Services Fee Schedule**;

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Physician; or~~
- ~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

- ~~1. An advanced practice registered nurse; or~~
- ~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

- ~~1. Licensed professional clinical counselor;~~
- ~~2. Licensed clinical social worker;~~
- ~~3. Licensed psychological practitioner; or~~
- ~~4. Licensed marriage and family therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service];~~

~~6. Peer support specialist working under the supervision of a mental health professional;~~

~~7. Family peer support specialist working under the supervision of a mental health professional; or~~

~~8. Youth peer support specialist working under the supervision of a mental health professional].~~

~~(13)/(14)] The rate per unit for comprehensive community support services shall be as established on the Non-Medicare Services Fee Schedule;~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

~~2. Licensed clinical social worker;~~

~~3. Licensed psychological practitioner; or~~

~~4. Licensed marriage and family therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or~~

~~5. Physician assistant working for a physician if the physician is the billing provider for the service];~~

~~6. Peer support specialist working under the supervision of a mental health professional;~~

~~7. Family peer support specialist working under the supervision of a mental health professional; or~~

~~8. Youth peer support specialist working under the supervision of a mental health professional].~~

~~(14)/(15)] The rate per unit for peer support services shall be as established on the Non-Medicare Services Fee Schedule [fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~(a) Peer support specialist working under the supervision~~

~~of a qualified mental health professional; or~~

~~(b)] [Family peer support specialist working under the supervision of a mental health professional; or~~

~~(c)] [Youth peer support specialist working under the supervision of a qualified mental health professional].~~

~~(15)/(16)] The rate per unit for parent or family peer support services shall be as established on the Non-Medicare Services Fee Schedule [fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a]:~~

~~(a) Peer support specialist working under the supervision of a mental health professional;~~

~~(b)] [family peer support specialist working under the supervision of a qualified mental health professional]; or~~

~~(c) Youth peer support specialist working under the supervision of a mental health professional].~~

~~(16)/(17)] The rate per unit for an intensive outpatient program shall be as established on the Non-Medicare Services Fee Schedule;~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

~~2. Licensed clinical social worker;~~

~~3. Licensed psychological practitioner; or~~

~~4. Licensed marriage and family therapist; or~~

~~(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;~~

~~2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;~~

~~3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;~~

~~4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or~~

~~5. Physician assistant working under the supervision of a physician if the physician is the billing provider for the service].~~

~~(17)/(18)] The rate per unit for a therapeutic rehabilitation program shall be as established on the Non-Medicare Services Fee Schedule;~~

~~(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Physician; or~~

~~2. Psychiatrist;~~

~~(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:~~

~~1. An advanced practice registered nurse; or~~

~~2. A licensed psychologist;~~

~~(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:~~

~~1. Licensed professional clinical counselor;~~

2. Licensed clinical social worker;

3. Licensed psychological practitioner; or

2. Licensed marriage and family therapist; or

(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service;

2. Licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

3. Licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

4. Certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service; or

5. Physician assistant working under the supervision of a physician if the physician is the billing provider for the service].

(18)/(19)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.

(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:

1. An interim version, the department shall use the interim version until the final version has been published; or

2. Final version, the department shall use the final version.

(19)/(20)] The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a community mental health center.

Section 4. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:

(1) 907 KAR 15:010; and

(2) This administrative regulation.

Section 5. Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 6. Incorporation by Reference. (1) "Non-Medicare Services Fee Schedule", May 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: December 19, 2013

FILED WITH LRC: December 26, 2013 at 4 p.m.

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Behavioral Health, Developmental and  
Intellectual Disabilities  
Division for Behavioral Health  
(As Amended at ARRS, May 13, 2014)

908 KAR 2:240. Kentucky Youth Peer Support Specialist.

RELATES TO: KRS 200.505, 210.010, 210.040, 210.370-210.485[210.370-485]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 210.450, 12.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect the health of Kentucky citizens and to implement programs mandated by federal law or to qualify for the receipt of federal funds. KRS 210.450 requires[authorizes] the secretary [of the Cabinet for Health and Family Services] to promulgate administrative regulations governing qualifications of personnel and[.] standards for personnel management for community programs for mental health or individuals with an intellectual disability[operations and consultation in ascertaining local needs for community behavioral health and developmental disabilities and other child and family-serving programs]. This administrative regulation establishes the minimum eligibility and training requirements for a Kentucky youth peer support specialist.

Section 1. Definitions. (1) "Applicant" means an individual seeking to complete the Kentucky Youth Peer Support Specialist training.

(2) "Application" means completing the Kentucky Youth Peer Support Specialist Core Competency Training Application form and submitting it to the department.

(3) "Child-serving agency" means an agency represented by the State Interagency Council.

(4) "Client" means a child with an emotional disability as defined by KRS 200.503(1) or who is at risk of developing an emotional disability.

(5)/(4)] "Core Competency" means the [established] knowledge and skills listed in Section 3(4) of this administrative regulation[skill] that all applicants must demonstrate in order to successfully complete the Kentucky youth peer support specialist training.

(6)/(5)] "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(7)/(6)] "Kentucky Family Leadership Academy" or "KFLA" means a prerequisite training designed for parents, caregivers, and youth leaders that fosters initial leadership development.

(8)/(7)] "Kentucky youth peer support specialist"["] or "KYPSS" means an eligible youth who has completed the requirements of this administrative regulation.

(9)/(8)] "Lived Experience" means an experience of a child or youth with an emotional, social, behavioral, or[and/or] substance use disability that is defined in the current version of The Diagnostic and Statistical Manual for Mental Disorders.

(10)[and who has received at least one (1) state-funded service for children with an emotional disability.

(9)] "Professional Equivalent" means a person who meets the professional equivalent requirements established in the Community Mental Health Center Services Manual that is incorporated by reference in 907 KAR 1:044[an individual who has a:

~~(a) Bachelor's degree in psychology, sociology, social work, or a human services-related field and three (3) years of full-time supervised experience;~~

~~(b) Master's degree in psychology, sociology, social work, pastoral counseling, or a human services-related field and six (6) months of full-time supervised experience; or~~

~~(c) Doctoral degree in psychology, sociology, social work, pastoral counseling, or a human services-related field].~~

~~(11)[(10)] "State family organization" means an organization with whom the department contracts to carry out the activities associated with statewide advocacy and support for children and youth with severe emotional disabilities.~~

~~(12)[(11)] "State Interagency Council" is the State Interagency Council for Services to Children with an Emotional Disability as defined by KRS 200.505.~~

~~(13)[(12)] "Youth Peer Support 101" means a training designed for Kentucky youth peer support specialists[KYPSS] and their supervisors that provides an orientation to the position.~~

Section 2. Eligibility Criteria. An applicant shall:

(1) Be an individual who is at least eighteen (18) years of age and is not older than thirty-five (35) years of age~~a youth between the ages of eighteen (18) and thirty-five (35) years];~~

(2) Have lived experience;

(3) Be receiving or have received from at least one (1) child-serving agency a state-funded service that is related to the youth's emotional, social, behavioral, or substance abuse disability~~services from at least one (1) of the child-serving agencies represented by the State Interagency Council];~~

(4) Have a high school diploma or general equivalency diploma~~education development]~~ (GED) certificate; and]

(5) Have successfully completed the KFLA training approved by the department;

(6) Discuss the experience of receiving state-funded services from at least one (1) child-serving agency on the applicant's responses on the short-essay form;

(7) Demonstrate experience with leadership and advocacy in the field of behavioral health; and

(8) Demonstrate his or her own efforts at self-directed leadership development.

Section 3. Department's Responsibilities. The Department shall:

(1) Ensure~~Assure]~~ that the KYPSS Core Competency Training Application is~~shall be]~~ available to eligible applicants through:

(a) A written or verbal request to the department;

(b) The department Web site;

(c) Member agencies of the State Interagency Council; and

(d) The statewide family organization;

(2) Approve the~~Provide state level]~~ KFLA training based on a standard curriculum that includes at a minimum:

(a) Leadership roles;

(b) Communication skills;

(c) Decision making skills;

(d) Dealing with conflict;

(e) Effective advocacy; and

(f) Collaboration and partnerships;

(3) Provide notification of KYPSS training to include:

(a) Date;

(b) Time;

(c) Location of the training; and

(d) Prerequisites for training participants as established by Section 2 of this administrative regulation;

(4) Approve~~Provide]~~ KYPSS training based on~~from]~~ a standard curriculum that includes at a minimum~~with]~~ the following core competencies:

(a) System of Care Philosophy;

(b) Wraparound Process;

(c) Youth Support;

(d) Group Process;

(e) Cultural and Linguistic Competence;

(f) Communication;

(g) Organization;

(h) Self-Care;

(i) Leadership; and

(j) Ethics and Values~~Value.]~~

(5) Maintain~~Receipt of]~~ documentation of an applicant's successful completion of the KYPSS training, including the applicant's];

(6) Maintenance of the following documents]:

(a) Application;

(b) Completion of the KFLA;

(c) Competency examination~~examinations];~~ and

(d) Examination results;and]

(6)[(7)] Maintain a database with the names of Kentucky youth peer support specialists; and

(7) Approve Youth Peer Support 101 training based on a standard curriculum that includes at a minimum:

(a) Position description;

(b) Role expectations;

(c) Supervision requirements;

(d) Coaching; and

(e) Other professional opportunities.

Section 4. Kentucky Youth Peer Support Specialist Duties and Responsibilities. A Kentucky youth peer support specialist shall:

(1) Use relevant personal stories to teach through experience;

(2) Serve as a role model for clients;

(3) Ensure and empower client voice and choice during plan] development and implementation of plans;

(4) Support clients by attending team meetings, upon request;

(5) Support clients by improving their confidence to be a self-advocate;

(6) Help individuals working with youth to understand youth culture; and

(7) Help clients enhance their relationships with community partners.

Section 5. Training Requirements. An applicant seeking to provide youth peer support specialist services shall:

(1) Complete and submit the KYPSS Core Competency Training Application to the department;

(2) Complete a department approved KYPSS training as defined in Section 3(4) of this administrative regulation~~Kentucky youth peer support specialist training];~~

(3) Successfully complete the oral and written examination following the training;and]

(4) Complete and maintain documentation of a minimum of six (6) hours of related training or education in each subsequent year;and

(5) After employment as a KYPSS, complete the department approved Youth Peer Support 101 training as defined in Section 3(7) of this administrative regulation.

Section 6. Request to Waive the Kentucky Youth Peer Support Specialist Training Requirements. (1) An applicant may request to waive the Kentucky youth peer support specialist training requirements. To request a waiver, an applicant shall provide the following to the department~~under the following conditions];~~

(a) Completion of the KYPSS Core Competency Training Application;

(b) Documentation of completion of a youth peer support specialist training sponsored by a federal entity or by another state with core competencies consistent with that of the KYPSS program; and

(c) Documentation to show that the training has occurred within five (5) years of the application date.

(2) The department shall review all requests to waive the training requirement and shall~~may];~~

(a) Approve the request in writing based on the documentation provided by the applicant;

(b) Approve the request in writing pending successful completion of the KYPSS Core Competency Training exam; or



(c) Deny the request in writing ~~if[should]~~ the applicant ~~fails[fail]~~ to demonstrate compliance with any provision of this administrative regulation.

(3) If an applicant is denied a training waiver, he or she may apply to complete the KYPSS training in accordance with ~~[the requirements in]~~ Section 5 of this administrative regulation.

Section 7. Kentucky Youth Peer Support Specialist Supervision. (1) Kentucky youth peer support services shall be provided under the supervision of one (1) of the following professionals who shall complete the department approved Youth Peer Support 101 training as defined in Section 3(7) of this administrative regulation:

- (a) Physician;
  - (b) Psychiatrist;
  - (c) Advanced practice registered nurse;
  - (d) Physician assistant;
  - (e) Licensed psychologist;
  - (f) Licensed psychological practitioner;
  - (g) Licensed clinical social worker;
  - (h) Licensed professional clinical counselor;
  - (i) Licensed marriage and family therapist;
  - (j) Certified psychologist;
  - (k) Certified psychologist with autonomous functioning;
  - (l) Licensed psychological associate;
  - (m) Marriage and family therapy associate;
  - (n) Certified social worker;
  - (o) Licensed professional counselor associate;
  - (p) Licensed professional art therapist;
  - (q) Professional equivalent;
  - (r) Certified alcohol and drug counselor; or
  - (s) Psychiatric nurse[Licensed psychologist or LP;
  - (d) Licensed psychological practitioner or LPP;
  - (e) Licensed psychological associate or LPA working under the supervision of a licensed psychologist;
  - (f) Licensed clinical social worker or LCSW;
  - (g) Certified social worker or CSW with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency, or a company engaged in the provision of mental health services, or a regional community mental health center;
  - (h) Licensed marriage and family therapist or LMFT with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, or a psychiatric unit of a general or private agency, or a company engaged in providing mental health services, or a regional community mental health center.]
- (2) [An] Individual supervision meetings[meeting] shall:
- (a) Be conducted face to face;
  - (b) ~~[and shall]~~ Occur no less than once a week for the first year and monthly thereafter; and
  - (c) Be documented in accordance with subsection (3) of this section.
- (3) The supervising professional shall maintain a written record for supervision that:
- (a) Is dated and signed by both the KYPSS and supervisor for each meeting; and
  - (b) Includes a description of the encounter that specifies:
    - 1. The topic discussed;
    - 2. Any specific action to be taken;
    - 3. An update for any issue previously discussed that required follow-up; and
    - 4. A plan for additional training needs if any were identified.

Section 8. ~~[Employment. A Kentucky Youth Peer Support Specialist may be employed by a:~~

- (1) ~~Member agency of the State Interagency Council;~~
- (2) ~~State operated facility; or~~
- (3) ~~State contracted provider.~~

~~Section 9.]~~ Incorporation by Reference. (1) "Kentucky Youth Peer Support Specialist Core Competency Training Application", May 2014, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 100 Fair Oaks Lane, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: January 29, 2014

FILED WITH LRC: February 6, 2014 at noon

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Behavioral Health, Developmental**  
**and Intellectual Disabilities**  
**Division for Behavioral Health**  
**(As Amended at ARRS, May 13, 2014)**

**908 KAR 2:250. Community support associate; eligibility criteria and training.**

RELATES TO: KRS 202A.011(12), 210.010, 210.040, 210.370 – 210.485, 309.080 – 309.089, 309.130 – 309.1399, 311.571, 314.042, 319.050, 319.056, 319.064, 335.100, 335.080, 335.500 – 335.599

STATUTORY AUTHORITY: KRS 210.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.450 authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations which prescribe standards for qualifications of personnel in community programs for mental health. This administrative regulation establishes the eligibility criteria and training requirements for community support associates employed by an entity which provides comprehensive community support services.

Section 1. Definitions. (1) "Client" means an adult or child who receives comprehensive community support services and has a primary mental health disorder diagnosis or a co-occurring disorder.

(2) "Co-occurring disorder" means the primary diagnosis of a mental health disorder and one (1) or more of the following:

- (a) Substance use disorder;
- (b) Intellectual disability; or
- (c) Physical health disorder or condition.

(3) ~~["Comprehensive community support entity" means a rendering practitioner, group of practitioners, or entity which meets the following criteria:~~

~~(a) Demonstrates capacity to employ qualified staff and coordinate the provision of services;~~

~~(b) Demonstrates capacity to provide comprehensive community support services;~~

~~(c) Has experience serving individuals who have a mental health disorder, substance use disorder, intellectual disability, or co-occurring disorders;~~

~~(d) Demonstrates administrative capacity to insure quality of services in accordance with state and federal requirements;~~

~~(e) Maintains a financial management system that provides documentation of services and costs; and~~

~~(f) Documents and maintains individual case records in accordance with state and federal requirements.~~

(4) "Comprehensive community support services" means activities necessary to allow clients to live with maximum independence in the community and consists of one (1) or more of the following:

(a) Skills training, cueing, or supervision as identified in the client's individualized treatment plan;

(b) Medication adherence~~[Reminders for medications]~~ and recognizing symptoms and side effects;

(c) Non-clinical but therapeutic behavioral intervention, support, and skills training;

(d) Assistance in accessing and utilizing community resources;

(e) Emotional regulation skills;

(f) Crisis coping skills; and

(g) Developing and enhancing interpersonal skills.

(4)(5) "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(5)(6) ~~"Mental health associate" means an individual who:~~

~~(a) Has a minimum of a bachelor's degree in:~~

~~1. Psychology;~~

~~2. Sociology;~~

~~3. Social work; or~~

~~4. A human services-related field; and~~

~~(b) Works under the supervision of a qualified mental health professional.~~

(7) "Professional equivalent" means a person who meets the professional equivalent requirements established in the Community Mental Health Services Manual that is incorporated by reference in 907 KAR 1:044.

(6)~~[an individual who has:~~

~~(a) 1. A bachelor's degree in:~~

~~a. Psychology;~~

~~b. Sociology;~~

~~c. Social work; or~~

~~d. A human services-related field; and~~

~~2. Three (3) years of full-time supervised experience;~~

~~(b) 1. A master's degree in:~~

~~a. Psychology;~~

~~b. Sociology;~~

~~c. Social work;~~

~~d. Pastoral counseling; or~~

~~e. A human services-related field; and~~

~~2. Six (6) months of full-time supervised experience; or~~

~~(c) A doctoral degree in:~~

~~1. Psychology;~~

~~2. Sociology;~~

~~3. Social work;~~

~~4. Pastoral counseling; or~~

~~5. A human services-related field.~~

(8) "Qualified mental health professional" is defined by KRS 202A.011(12). (9) ~~"Qualified substance abuse treatment professional" means an individual who is:~~

~~(a) An alcohol and drug counselor certified by the Kentucky Board of Certification for Alcohol and Drug Counselors as required by KRS 309.080 to 309.089;~~

~~(b) An individual certified or licensed as one (1) of the following:~~

~~1. A Kentucky physician licensed in accordance with KRS 311.571 to practice medicine or osteopathy or a medical officer of the government of the United States while engaged in the performance of official duties;~~

~~2. A psychiatrist licensed in accordance with KRS 311.571 to practice medicine or osteopathy or a medical officer of the government of the United States while engaged in the performance of official duties who is certified or eligible to apply for certification with the American Board of Psychiatry and Neurology;~~

~~3. A licensed psychologist who holds the health service provider designation in accordance with KRS 319.050;~~

~~4. A certified psychologist with autonomous functioning certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;~~

~~5. A certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;~~

~~6. A licensed psychological practitioner licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;~~

~~7. A licensed psychological associate licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.064;~~

~~8. A clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;~~

~~9. A social worker certified by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.080;~~

~~10. An advanced practice registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS 314.042 with scope of practice in psychiatric or mental health nursing;~~

~~11. A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a master's degree in psychiatric nursing from an accredited college or university and two (2) years of full-time clinical experience in psychiatric nursing;~~

~~12. A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor of science degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association, and who has three (3) years of full-time clinical experience in psychiatric nursing;~~

~~13. A registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, and who has one (1) of the following combinations of education and work experience:~~

~~a. A bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;~~

~~b. A diploma graduate in nursing and two (2) years clinical work experience in the substance abuse or mental health field; or~~

~~c. An associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;~~

~~14. A marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS 335.300 to 335.399;~~

~~15. A professional counselor licensed by the Kentucky Board of Licensed Professional Counselors in accordance with the provisions of KRS 335.500 to 335.599; or~~

~~16. A professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130 to 309.1399; or~~  
~~(c) A qualified mental health professional with eighty (80) hours of substance abuse training.]~~

Section 2. Eligibility Criteria. (1) A community support associate~~[employed by a comprehensive community support entity]~~ shall:

(a) Be eighteen (18) years of age or older;

(b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;

(c) Have one (1) year of full-time experience working with individuals who receive services for treatment of a:

1. Mental health disorder; or

2. [Substance use disorder; or

3.] Co-occurring disorder; and

(d) Successfully complete within six (6) months of hire the department-led or approved training program described in Section 3 of this administrative regulation.

(2) Supervision. A community support associate shall:

(a) Work under the supervision of one (1) of the following:

1. Physician;

2. Psychiatrist;

3. Advanced practice registered nurse;

4. Physician assistant;

5. Licensed psychologist;

6. Licensed psychological practitioner;  
7. Licensed clinical social worker;  
8. Licensed professional clinical counselor;  
9. Licensed marriage and family therapist;  
10. Certified psychologist;  
11. Certified psychologist with autonomous functioning;  
12. Licensed psychological associate;  
13. Marriage and family therapy associate;  
14. Certified social worker;  
15. Licensed professional counselor associate;  
16. Licensed professional art therapist;  
17. Professional equivalent;  
18. Certified alcohol and drug counselor;  
19. Psychiatric nurse; or  
20. Licensed board certified behavior analyst[Qualified  
mental health professional;  
2. Qualified substance abuse treatment professional;  
3. Professional equivalent;  
4. Mental health associate;  
5. Mental health case manager; or  
6. Substance use disorder case manager]; and  
(b) Meet face-to-face no less than one (1) time every two (2) weeks with his or her supervisor as described in paragraph (a) of this subsection.  
(3) The supervisor shall maintain a written record of supervision that:  
1. Is dated and signed by the supervisor for each meeting; and  
2. Includes a description of the encounter that specifies:  
a. The topic discussed;  
b. Any specific action to be taken;  
c. An update for any issue previously discussed that required follow-up; and  
d. A plan for additional training needs if any were identified.

Section 3. Initial Training Requirements. A department-~~led~~ or approved training curriculum for a community support associate shall consist of ten (10) clock hours of planned program instruction at a minimum in the following areas:

- (1) Principles of recovery and resilience;  
(2) Principles of psychiatric[psychosocial] rehabilitation;  
(3) Effective listening and communication skills; [and]  
(4) Diagnosis and medication management of mental health disorders [, substance use disorders,] or co-occurring disorders; and  
(5) Crisis coping skills.

Section 4. Annual Training. During each subsequent year of employment, a community support associate shall complete and maintain documentation of a minimum of six (6) hours of training or education related to the specification described in Section 3(1) through (5)[(4)] of this administrative regulation.

MARY REINLE BEGLEY, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: January 29, 2014

FILED WITH LRC: February 6, 2014 at noon

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE  
SYSTEM

Kentucky Fire Commission  
(Amended After Comments)

739 KAR 2:090. Candidate Physical Ability Test.

RELATES TO: KRS 75.010, 95A.040

STATUTORY AUTHORITY: KRS 95A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.040

requires the commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This administrative regulation establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

Section 1. **"Candidate means any individual, including a volunteer firefighter, who shows interest in, or has applied for, a career position within a fire department."**

**(2)** Definitions. (1) "CPAT" means the most current version of the Candidate Physical Ability Test Program copyrighted by the IAFF.

**(3) [(2)]** "CPAT Administration" means the IAFF's secure web-based tool for all IAFF licensees to collect and provide aggregate and redacted data in support of all aspects of administering the CPAT program.

**(4) [(3)]** "IAFC" means the International Association of Fire Chiefs.

**(5) [(4)]** "IAFF" means the International Association of Fire Fighters.

**(6) [(5)]** "SFRT area offices" means State Fire Rescue Training area offices.

Section 2. Licensure Requirements. (1) All candidates applying for full-time employment as a firefighter with a Kentucky fire department on or after January 1, 2013 shall have successfully completed the CPAT, with the exception of:

(a) Fire department chiefs and their executive staffs, with the executive staff designation to be determined by the fire chief or other executive authority as provided in the job descriptions of the local government presiding over the fire department, provided that no more than twenty-five (25) percent of a single department's paid personnel be classified as executive staff;

(b) Any part-time firefighter employed and paid by a fire department prior to January 1, 2013, who is promoted to a full-time position within the same fire department; or

(c) Any full-time firefighter who is currently employed or who has previously been employed by a Kentucky fire department in accordance with KRS Chapters 67, 75, and 95 prior to January 1, 2013, who is hired by another fire department and has not been out of fire service for more than 365 days.

(2) Any Kentucky fire department may, in addition to the requirement of subsection (1) of this section, require all new candidates hired for full-time firefighter positions to successfully complete the CPAT, including the categories of candidates listed in subsections (1)(a)-(c) of this section. A fire department may accept a CPAT certification obtained in a state other than the Commonwealth of Kentucky to fulfill the requirements of this administrative regulation.

(3) All fire departments established pursuant to KRS 75.010 shall be fully licensed with the IAFF to implement the CPAT and may administer the CPAT independently of the Kentucky Fire Commission with thirty (30) days prior notification to the Kentucky Fire Commission. The Kentucky Fire Commission shall assist each fire department in obtaining such licensure upon written request and shall be responsible for all costs associated with IAFF licensure. The Kentucky Fire Commission shall assume all liability for compliance with the CPAT program.

(a) The Kentucky Fire Commission shall agree, on behalf of all licensees, to collect and provide to the IAFF and the IAFC data

regarding number of male, female, and minority applicants that have taken the CPAT and the pass and fail rates of each. The CPAT Administration shall be used by the Kentucky Fire Commission as the sole means for collecting and providing data as well as for the administration of the CPAT.

(b) All licensees shall use the CPAT in whole and only for the purpose of candidate testing in accordance with the most current copyrighted version of the "CPAT Manual, 2nd Edition". This includes, but is not necessarily limited to, recruiting, mentoring, preparatory programs, orientation programs, and proper program administration including using specified equipment, test parameters, qualified proctors, and test personnel.

1. The Kentucky Fire Commission shall provide the staff necessary for all CPAT mentoring, orientation, and practice testing, unless a fire department administers the CPAT independently of the Kentucky Fire Commission.

2. The Kentucky Fire Commission shall complete the transportability studies and licensure requirements provided in Chapter 3 of the CPAT Manual.

3. The Kentucky Fire Commission shall provide all candidates with the pre-test materials and preparation guides required in Chapter 4 of the CPAT Manual.

4. Consistent with Chapter 4 of the CPAT Manual, a candidate may opt to take the CPAT examination during either of the mandatory practice sessions. If a candidate opts to take the CPAT examination during a practice session, the candidate shall not be permitted to re-take the examination during the same administration period. Any candidate applying for re-certification within one year of initial certification may opt out of the orientation session.

(c) The CPAT shall be administered by the Kentucky Fire Commission continually in two (2) separate permanent locations. One (1) such permanent location shall be located in Louisville, Kentucky, and the other shall be located in Winchester, Kentucky. Future permanent locations may be established by the Kentucky Fire Commission with prior board approval.

(d) The Kentucky Fire Commission shall administer the CPAT and the required orientation and practice sessions throughout the Commonwealth of Kentucky in the manner prescribed in subparagraphs 1 through 9 of this paragraph, provided that these regional training requirements may be satisfied if a permanent location providing continuous training is established in the specific region pursuant to paragraph (c) of this subsection. In conducting the CPAT exam and required orientation and practice sessions, the Kentucky Fire Commission shall attempt to locate the facilities in closest proximity to the fire department with the majority of potential candidates.

1. The CPAT shall be administered at least once per year in the region comprised of Areas 1 and 2, combined.

2. The CPAT shall be administered at least once per year in Area 4.

3. The CPAT shall be administered at least once per year in the region comprised of Areas 9, 10, 11, and 12, combined.

4. The CPAT shall be administered at least once per year in the region comprised of Areas 13 and 14, combined.

5. The CPAT shall be administered at least two (2) times per year in Area 3.

6. The CPAT shall be administered at least two (2) times per year in Areas 5 and 6, combined.

7. The CPAT shall be administered at least two (2) times per year in Area 7.

8. The CPAT shall be administered at least two (2) times per year in Area 15.

9. Any of the trainings required under subparagraphs 1 through 8 of this paragraph may be cancelled if no more than fifteen (15) candidates have registered within ninety (90) days prior to the scheduled examination.

(e) The Kentucky Fire Commission shall administer the CPAT using mobile equipment within an SFRT area office area upon written request from a fire department located within that SFRT

area office area, on the conditions that the CPAT has not been administered within that SFRT area office area during the four (4) months prior to the request and that there are a minimum of fifteen (15) candidates registered for the examination. The CPAT shall be administered within ninety (90) days of receipt of the request if all of the resources required to administer the CPAT are anticipated to be available on the date requested.

(f) The Kentucky Fire Commission, with the assistance of local fire departments, shall be responsible for securing the location of the regional examinations provided in paragraph (d)2 and 3 of this subsection. In the event that the Kentucky Fire Commission and local fire departments are unable to secure an appropriate location within thirty (30) days of the scheduled examination, the examination shall be cancelled.

(g) The responsibility for securing a CPAT examination site upon fire department request shall be shared jointly between the Kentucky Fire Commission and the requesting local fire department. The requesting fire department shall suggest a location which meets the requirements detailed in the CPAT Manual for a testing site. If the property is owned by a city, county, or state government, the Kentucky Fire Commission shall secure the property. In the event that the Kentucky Fire Commission and the requesting fire department are unable to secure an appropriate location within thirty (30) days of the scheduled examination, the examination shall be cancelled. The Kentucky Fire Commission may inspect the site up to thirty (30) days prior to the scheduled examination.

(h) The Kentucky Fire Commission shall establish a schedule for the administration of the CPAT on an annual basis. This schedule shall be published on the Kentucky Fire Commission Web site at least thirty (30) days prior to January 1 of each year. Any additional administrations of the CPAT shall also be publicized and communicated to all fire departments located within the SFRT area office area in which the CPAT is being administered.

(i) A CPAT certification obtained in the Commonwealth of Kentucky shall remain valid for one (1) year if the candidate is not hired by the fire department on whose behalf the CPAT is administered. Such a CPAT certification shall be considered to have fulfilled the requirements of this administrative regulation by another fire department with whom the candidate applies for full-time employment for the year following the date of initial certification.

(4) A third party testing organization may obtain a limited CPAT license for the purpose of testing the physical capability of firefighter candidates. The limited license shall be granted only upon the express condition that the licensee may only administer the CPAT for a fire department which already possesses a valid full license from the IAFF. As a condition of receiving a limited license, an applicant shall agree that it shall only administer the CPAT in accordance with the IAFF's licensing requirements, which include full compliance with the EEOC conciliation agreement and utilization of the CPAT Administration.

(a) Limited licensees shall not administer the CPAT to any person without first obtaining a written agreement with the fire department to which the person is applying. A standard agreement is incorporated by reference. The agreement shall contain the following provisions:

1. The fire department shall certify that it has a valid CPAT license and that it agrees to recognize and accept proof of completion of the CPAT from the limited licensee;

2. The fire department shall certify that it shall utilize the CPAT only in the context of an overall implementation of the CPAT program that complies with its CPAT license;

3. The limited licensee shall have the capability and agree to assist the fire department in meeting the terms of compliance, including the pre-test orientation and mentoring requirements;

4. The limited licensee shall have the capability and staff to validate the CPAT for jurisdictions through a transportability study, assist the fire department in obtaining CPAT licensure, provide consistent CPAT testing administration, and legally defend their validation and CPAT administration;

5. The limited licensee shall have the capability and agree to provide candidates continuously available practice tests and

orientations. It shall further assist the CPAT licensed fire department in establishing candidate mentoring programs. The limited licensee shall have purchased all CPAT equipment and verify that the equipment and props conform to all specifications outlined in the CPAT Manual and that it has the ability to administer the CPAT in conformity with the specifications of the CPAT Manual;

6. No cost shall be imposed upon a Kentucky resident for the administration of the CPAT by a limited licensee located in the Commonwealth of Kentucky. Any such fee shall be paid by the Kentucky Fire Commission; and

7. If the limited licensee provides CPAT certifications for a candidate's use in applying for employment in multiple fire departments, it shall notify the IAFF of the CPAT licensed fire departments for which the certification is provided. The Kentucky Fire Commission shall provide an electronic system by which to transmit this information. CPAT licensed fire departments which accept the certifications can verify an applicant's results and the date upon which the results are no longer valid.

(b) Limited licensees shall agree to fully cooperate with the IAFF in its conduct of on-site reviews and audits of any facility holding a limited license. The on-site review and audit shall include, but is not necessarily limited to, the following:

1. Verification of written agreements with fire departments;

2. Verification of test administration procedures;

3. Verification of proctors;

4. Facility inspection in accordance with the CPAT requirements on size, environmental conditions, floor composition, etc.;

5. Equipment inspection to ensure that all equipment and props meet the CPAT specifications;

6. Verification that course layout is in accordance with the CPAT specifications; and

7. Verification that the CPAT Administration is being properly used and data reported.

(c) Limited license holders shall be charged an annual licensing fee of \$5,000 to be paid to the IAFF. Limited licenses shall be non-transferable, nonexclusive, and revocable at will for any reason.

(d) Limited license holders shall confirm their license with the Kentucky Fire Commission prior to administering the CPAT.

(5) From the effective date of this administrative regulation through July 1, 2015, the Kentucky Fire Commission shall issue a notice of violation via United States Postal Service to any individual, organization, or governmental entity in violation of any provision of this administrative regulation. Prior to July 1, 2015, the Kentucky Fire Commission may impose all penalties authorized by law on any individual, organization, or governmental entity found to be committing fraud or providing false information to the Kentucky Fire Commission. After July 1, 2015, the Kentucky Fire Commission may impose any penalty authorized by law on any individual, organization, or governmental entity in violation of any provision of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CPAT Manual, 2nd Edition", 2007; and

(b) "Fire Department Agreement", 2013, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Fire Commission, 118 James Ct., Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

ANNE-TYLER MORGAN, Legal Counsel

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 14, 2014 at noon

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Anne-Tyler Morgan

(1) Provide a brief summary of:

(a) What this administrative regulation does: 739 KAR 2:090 establishes the candidate physical ability test to be used for candidates seeking professional firefighter positions.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 95A.040, which requires the Kentucky Fire Commission to implement a candidate physical ability test to establish uniform standards of the physical abilities required of all firefighter candidates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 95A.040, which requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 95A.040 requires the Kentucky Fire Commission to establish and implement a candidate physical ability test to be administered to all candidates for professional firefighter positions. This regulation ensures that all candidates for professional firefighting positions will be tested consistently and comprehensively.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation and is not an amendment to an existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

(a) All candidates seeking professional firefighter positions;

(b) All fire departments who are licensed with the IAFF to implement the CPAT;

(c) All third party testing organizations who obtain a Limited CPAT license for the purpose of testing the physical capability of fire fighter candidates;

(d) County and City Governments who fund fire departments within their governmental boundaries; and

(e) All residents and citizens who receive firefighting services in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities – fire fighter candidates, fire departments, third party testing organizations, and county and city governments – shall meet applicable requirements for IAFF licensure and CPAT implementation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3) other than third party testing organizations, who must pay the cost of limited IAFF licensure in order to administer the CPAT.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from the consistency of fire fighter performance testing as administered through use of the CPAT, which will result in the greater competency of Kentucky's fire fighters and fire departments.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: The Kentucky Fire Commission shall pay for the administration of the CPAT to full-time fire fighter candidates.

(a) Initially: The above paragraph is accurate for initial costs.

(b) On a continuing basis: The above paragraph is accurate for continuing costs.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Fire Commission is a state agency that receives its annual budget from the state government. The funding allotted for the administration of the CPAT is provided by an insurance surcharge in a trust and agency account.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation did not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation will relate to any County or City owned fire department obtaining an IAFF license to administer the CPAT.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.040. No federal statutes necessitate this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on County and City owned fire departments administering the CPAT.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not impose any costs on County and City owned fire departments administering the CPAT.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs on County and City owned fire departments administering the CPAT.

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Aging and Independent Living**  
**Division of Guardianship**  
**(Amended After Comments)**

**910 KAR 2:040. Service provisions for adult guardianship.**

RELATES TO: KRS 202A, 202B, 209.990, 210.290(3), (4), 367.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R. 416.212, 42 U.S.C. 1382(e)(1)(G)

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes service provisions for adult guardianship.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020.

(2) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(3) "BHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(4) "Conservator" is defined by KRS 387.510(1).

(5) ~~[(4)]~~ "Court" means a court of competent jurisdiction.

(6) "Department" means the Department for Aging and Independent Living (DAIL).

(7) ~~[(5)]~~ "Division" means the Division of Guardianship.

(8) ~~[(6)]~~ "DMHDDAS" means the Department for Mental Health, Developmental Disabilities and Addiction Services.

(7) "Fiduciary Services Branch" means a central office branch under the Division of Operations and Support ~~[Guardianship]~~.

(9) ~~[(8)]~~ "Field Services Branch" means a central office branch under the Division of Guardianship.

(10) ~~[(9)]~~ "Guardian" is defined by KRS 387.510(3).

(11) ~~[(40)]~~ "Guardian ad Litem" means a guardian appointed to represent the interests of a person with respect to a single action in litigation.

(12) "Guardianship advisory committee" means a review panel of at least two (2) cabinet medical directors to review records to assist in decision making regarding end of life decisions.

(13) ~~[(44)]~~ "Informed consent" means a person's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently.

(14) ~~[(42)]~~ "Interested party" means an individual or agency interested in assuming duties and responsibilities on behalf of a ward.

(15) ~~[(43)]~~ "Least restrictive alternatives" means the guardianship options that have been exhausted such as:

- (a) Power of attorney;
- (b) Living wills;
- (c) Advanced directives;
- (d) Case management;
- (e) Representative payee;
- (f) Curator;
- (g) Trustee;
- (h) Health care surrogate;
- (i) Ex-parte order;
- (j) Emergency protective services;
- (k) Adult protective ongoing services; or
- (l) Informal network of support.

(16) ~~[(44)]~~ "Limited conservator" is defined by KRS 387.510(2).

(17) ~~[(45)]~~ "Limited guardian" is defined by KRS 387.510(4).

(18) "Nurse consultant" means a nurse consultant, inspector employed by the Cabinet for Health and Family Services.

(19) ~~[(46)]~~ "Provider" means a facility or entity providing services for a ward such as:

- (a) Self;
- (b) Caretaker;
- (c) Relative;
- (d) Group home placement;
- (e) Hospital;
- (f) Psychiatric hospital;
- ~~(g) [(4)]~~ Personal care home; or
- (h) Supports for Community Living facility.

(20) "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.

(21) ~~[(47)]~~ "Substituted judgment" means principle of decision-making made by the Field Services Branch which comports with the individual ward or beneficiary's known wishes expressed prior to the appointment of a guardian, if the individual was once capable of developing views relevant to the matter at issue and reliable evidence of these views remains.

(22) ~~[(48)]~~ "Successor guardian" means an individual, agency or corporation who is appointed to succeed a current guardian removed by the court.

(23) ~~[(49)]~~ "Quit claim deed" means a document by which an individual disclaims an interest in a piece of real property and passes that claim to another person.

(20) "Ward" is defined by KRS 387.510(15).

Section 2. Annual Court Report. (1) Within thirty (30) calendar days of the anniversary date of the guardianship appointment, the Field Services Branch shall submit to the court an annual report on the ward's personal status.

(2) In order to complete the annual report the Field Services Branch shall:

- (a) Visit the ward and use an Initial Field Visit Report to assess current physical condition and needs;
- (b) Review the ward's records at the ward's place of residence;
- (c) Consult with the provider concerning the ward's care;
- (d) Verify the names, addresses, and telephone numbers of the ward's relatives; and
- (e) Verify with Fiduciary Services Branch the ward's burial arrangements in accordance with 910 KAR 2:030, Section 12.

(3) The Field Services Branch shall:

- (a) Review, sign, and notarize an annual report; and
- (b) Maintain a scheduling system that ensures the timely filing of annual reports in court for each guardianship ward.

Section 3. Renewal of Limited Appointments. (1) A limited guardian or limited conservator shall not be appointed for more than five (5) years pursuant to KRS 387.590(7).

(2) The Field Services Branch shall be responsible for initiating procedures for continued guardianship or conservatorship, if appropriate.

(3) To make this determination, the Field Services Branch shall review the last annual court report to determine if continued guardianship was recommended.

(4) The Field Services Branch shall secure a verified affidavit from a physician, psychiatrist, or social worker, not serving in the division, verifying the ward's petition to continue guardianship.

(5) At least sixty (60) calendar ~~[(60)]~~ days prior to the date of the expiration of the limited guardianship, the Field Services Branch shall file with the court the following:

- (a) Petition for Relief Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov);
- (b) Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and
- (c) A verified affidavit as specified in subsection (4) of this section.

(6) If the request for modification involves the removal of additional rights, the Field Services Branch shall request a jury trial.

(7) If required by the court, the Field Services Branch shall attend the renewal hearing and testify.

(8) Once a court order is issued, the Field Services Branch

shall obtain a copy of the court documents.

Section 4. Restoration or Modification of Rights. (1) The Field Services Branch shall inform the ward of the restoration or modification of rights process.

(2) If a ward requests the restoration of his or her rights, the Field Services Branch shall assess and assist the ward's request.

(3) The Field Services Branch shall complete an assessment of the ward using the Initial Field Visit Report that includes:

- (a) Community supports available to assist the ward;
- (b) Less restrictive interventions that are available to the ward;
- (c) Improvements in the ward's ability to manage personal or financial affairs;
- (d) Risks and benefits of restoration or modification of rights; and
- (e) A recommendation of what rights could be appropriately restored, including voting rights.

(4) If the assessment supports restoration or modification, the Field Services Branch shall assist the ward in preparation of the Petition for Relief Modification or Termination (AOC-795), issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), for submittal to the court.

(5) If the assessment does not support restoration or modification, the Field Services Branch shall advise the ward or other interested party after the assessment is complete that he or she may call or write the court to request restoration.

(6) If it is in the ward's best interest, the Field Services Branch shall work with the ward towards the goal of restoration or modification by developing a plan and setting attainable and measurable goals.

(7) The Field Services Branch shall involve community partners in formulating the plan to ensure focus on comprehensive services.

(8) The Field Services Branch shall agree on a time frame for evaluating the ward's progress.

(9) If the ward has some rights restored and the cabinet's appointment is modified, the Field Services Branch shall:

- (a) Obtain a copy of the cabinet's new appointment; and
- (b) Email notification of the change to the Fiduciary Services Branch.

(10) If the ward's rights are restored and the cabinet no longer serves in any capacity, the Field Services Branch shall:

- (a) Obtain a copy of the court order indicating restoration;
- (b) Notify Fiduciary Services Branch by email of the resignation and the mailing address of the ward;
- (c) Review the ward's records and hard copy file to determine if any original information or documentation should be sent to the Fiduciary Services Branch and, if so, forward the same to the Fiduciary Services Branch within ten (10) working days of the review;
- (d) Inform the restored ward about procedures to apply for benefits; and
- (e) Direct the restored ward to the Fiduciary Services Branch regarding additional financial questions.

Section 5. Securing Successor Guardian or Conservator. (1) The Field Services Branch shall advise or assist an interested party, if appropriate.

(2) The Field Services Branch shall discuss with the interested party:

- (a) The possibility of he or she becoming guardian; and
- (b) The following information:
  - 1. Prior history and involvement of the interested party;
  - 2. Willingness of the interested party to assist the ward; and
  - 3. A criminal background check on the interested party with the county attorney.

(3) If the Field Services Branch determines the appointment of the interested party as successor guardian or conservator is in the best interest of the ward, the Field Services Branch shall assist the interested party with the completion and filing of:

- (a) The Petition for Relief, Modification or Termination (AOC-795) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov); and

(b) An Application for Appointment for Fiduciary (AOC-745) issued by the Administrative Office of the Courts and available at [www.courts.ky.gov](http://www.courts.ky.gov), with the court.

(4) The Field Services Branch shall submit to the court a letter supporting appointment of the applicant for successor guardian or conservator.

(5) If the Field Services Branch does not agree that successor guardian or conservator appointment is in the best interest of the ward, the Field Services Branch shall:

- (a) Advise the interested party that he or she may contact the court and make appropriate application; and
- (b) Submit a letter to the court specifying the concerns regarding the application of appointment for successor guardian or conservator.

(6) The Field Services Branch shall be available to testify at the hearing to determine if a successor guardian or conservator is appointed by the court.

(7) If a successor guardian or conservator is appointed and the cabinet retains no responsibility, the Field Services Branch shall:

- (a) Obtain a copy of the court order showing change in guardianship and verification that bond has been posted if surety has been ordered by the court;

(b) Notify Fiduciary Services Branch by email of the resignation;

(c) 1. Review the ward's records and hard copy file to determine if any original information or documentation should be sent to Fiduciary Services Branch for submission to the successor guardian or conservator; and

2. If so, forward the information or documentation to the Fiduciary Services Branch within ten (10) working days of the review;

(d) Inform the successor guardian or conservator about procedures to apply for benefits; and

(e) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding additional financial questions.

(8) If the successor guardian or conservator is appointed in some capacity and the cabinet retains some level of responsibility, the Field Services Branch shall:

- (a) Obtain a copy of the court order showing the change in guardianship and verification that bond has been posted if surety was required by the court;

(b) Notify the Fiduciary Services Branch by email of the change in the cabinet's responsibility;

(c) Inform the successor guardian or conservator about procedures to apply for relevant benefits; and

(d) Direct the successor guardian or conservator to the Fiduciary Services Branch regarding financial questions.

Section 6. Sale of Real of Estate. (1) If a ward of the cabinet has real property, the Field Services Branch and the Fiduciary Services Branch staff shall explore options for management of property and determine what is in the best interest of the ward.

(2) Information concerning the property valuation for tax purposes, the real estate or personal property, or offers to purchase the ward's property shall only be disclosed to the following authorized persons:

- (a) Other staff employed by the cabinet's division such as:
  - 1. Office of the Inspector General (OIG);
  - 2. Office of Legal Services (OLS);
  - 3. Ombudsman;
  - 4. Adult Protective Services (APS); or
  - 5. Child Protective Services (CPS);
- (b) The insurance agent or claims representative of the insurance company that wrote the insurance policy on the property;
- (c) The real estate agent and attorney with a provider agreement to manage property and legal matters for the service region; or
- (d) The Guardian ad Litem appointed for the sale of the ward's property.

(3) If disposing of the ward's assets, the Field Services Branch shall make a reasonable effort to preserve the estate as designated in a ward's will or other estate planning devices executed by a ward prior to the finding of disability in accordance



with KRS 387.700(1).

(4) The Field Services Branch shall review court appointment papers to ensure that the cabinet has the authority to handle real estate and personal property matters.

(5) As deemed necessary or mandatory by the court, the Field Services Branch shall secure an independent appraisal of real and personal property.

(6) The Field Services Branch shall secure an attorney to handle the sale of property pursuant to KRS 389A.010 and 389A.015.

(7)(a) The Field Services Branch shall ensure the cabinet only passes title by means of a Quit Claim Deed on behalf of the ward.

(b) A Quit Claim Deed passes only the interest held by the ward.

(c) Warranties shall not be expressed in a Quit Claim Deed.

(8) The Field Services Branch shall determine if a relative or other interested party is interested in purchasing real property and, if so, offer the property appraised by a realtor to the relative or other interested party.

(9) If the division determines it is in the ward's best interest to sell real and personal property, a public forum for sale shall include a:

- (a) Public auction;
- (b) Dealer consignment;
- (c) Yard sale; or
- (d) Realtor.

(10) The Field Services Branch shall dispose of remaining items that did not sell, if applicable, [items] through donation.

(11) The Field Services Branch shall seek eviction through the court if a person residing in the ward's property:

- (a) Refuses to vacate the property;
- (b) Is not paying rent; or
- (c) Is causing damage to the property; ~~or (d) Refuses to vacate due to sale of the property.~~

(12) The Field Services Branch shall attend a closing on the ward's real property and shall sign documents such as a:

- (a) Quit Claim Deed;
- (b) Settlement Statement; or
- (c) Tax form.

Section 7. Guardianship Ongoing Service Provision. (1) The Field Services Branch:

(a) Shall have someone on call twenty-four (24) hours a day; and

(b) May have duties such as:

- 1. Managing assets, that may include managing or liquidating real and personal property;
- 2. Securing and giving consent for social services, medical services and living arrangements; or
- 3. Securing and granting permission for other needed support services necessary for the well-being of the ward.

(2) Pursuant to KRS 387.640(1), the cabinet as guardian shall have the general duty to assure that the personal, civil, and human rights of the ward are preserved and protected.

Section 8. Decision Making on Behalf of a Ward. (1) A decision made on behalf of a ward by the Field Services Branch shall be based on the principles of:

- (a) Informed consent;
- (b) Substituted judgment;
- (c) Best interest; or
- (d) Least restrictive alternative.

(2) The Field Services Branch shall use the following guidelines if making a decision on behalf of a ward:

- (a) The exact request of the ward;
- (b) Conditions identified necessitating action;
- (c) Identify and determine alternatives that best meets the individual needs of the ward while placing the least restrictions on the ward's:

- 1. Freedom;
- 2. Rights; and
- 3. Ability to control the ward's own environment;
- (d) Based on available information, determine whether the

ward has previously stated preferences prior to the cabinet being made the ward's guardian;

(e) Communication of decisions with the ward;

(f) A determination of risks and benefits:

1. While balancing the ward's maximum self-determination; and

2. Maintaining the safety of the ward; and

(g) Directions from the court.

(3) The Field Services Branch shall make each decision by an informed decision based on the principle of informed consent.

(4) The Field Services Branch shall not use substituted judgment if:

(a) Following the ward's wishes causes substantial harm to the ward; or

(b) The Field Services Branch is unable to establish the ward's prior wishes.

(5) The Field Services Branch shall consider the least intrusive, best interest, and least restrictive alternative course of action possible to provide for the needs of the ward.

Section 9. Visiting the Ward at the Current Residence. (1) The Field Services Branch shall visit the ward[and current residence] at least every ninety (90) days with a minimum of two (2) visits being in the home environment annually[quarterly] to:

(a) Assess the suitability of the placement and ascertain a ward's needs;

(b) Consult with facility personnel regarding the cabinet's expectations; and

(c) Participate in the ward's care plan.

(2) If the Field Services Branch visits a facility and concerns are identified, and if the issue does not require intervention by regulatory or certifying agencies, the Field Services Branch shall:

(a) Bring it to the attention of the facility's administrator or designee; and

(b) Develop an agreement for corrective action with the facility administrator.

(3) If the issue is a regulatory issue related to health or safety, the Field Services Branch shall report immediately to the appropriate regulatory or certifying agency such as:

- (a) OIG;
- (b) ~~DBHDID[Department for Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS)]~~; or
- (c) The department.

(4) The Field Services Branch shall report known or suspected incidents of abuse, neglect, or exploitation to:

(a) The Department for Community Based Services (DCBS) office;

(b) The Division of Protection and Advocacy (P&A)[(DPA)] if the Field Services Branch is aware the ward is a client of the P&A[DPA]; or

(c) Other appropriate state agency.

(5) The designated Field Services Branch shall complete the following duties:

(a) Explain reporting requirements to the ward;

(b) Explain the investigative process of abuse, neglect, or exploitation that will ensue; and

(c) Offer the alleged victim appropriate assistance or referral as specified in subsection (4) of this section.

Section 10. Out of State Travel. (1) If a request is made for a ward to travel out of the state of Kentucky, the Field Services Branch shall consider the following:

(a) Risk of or prior Absence Without Leave (AWOL);

(b) Medical issues of the ward that may require attention while out of state; and

(c) The ward's physical ability to handle the trip.

(2) The Field Services Branch shall inform the provider of the provider's financial responsibility for any emergency medical treatment not covered by the ward's medical insurance or Kentucky Medicaid from the time the ward leaves the state of Kentucky until the ward is once again within the legal boundaries of the Commonwealth of Kentucky.

(3) The Field Services Branch shall request a signed

memorandum or letter from the provider detailing the following information:

- (a) The potential for AWOL risk and if measures will be taken to lessen the risk;
  - (b) Acceptance of the involved responsibilities of the ward; and
  - (c) Proposed dates of travel.
- (4) If the Field Services Branch determines that the provider has been responsible and agrees travel is in the best interest of the ward, the Field Services Branch shall share all necessary emergency contact numbers with the provider and request the provider to:
- (a) Make contact upon return to the state of Kentucky; and
  - (b) Carry a copy of the current court order appointing the cabinet as guardian in case of an emergency.

Section 11. Signing Documents on Behalf of a Ward or Reports to Courts. (1) The Field Services Branch shall review facility contracts to ensure a ward's rights are preserved.

(2) The division shall not sign a contract for arbitration on behalf of a ward.

(3) A division employee shall use proper signature designation as follows:

(a) If signing on behalf of a ward, the wording shall be name of ward by name of cabinet guardianship employee on behalf of the cabinet as court appointed (type of appointment) for name of ward; or

(b) If signing a court document on behalf of the cabinet, the wording shall be name of guardianship employee on behalf of the Cabinet for Health and Family Services as court appointed (type of appointment) for name of ward.

(4) A division employee shall use the term:

(a) Conservator or limited conservator if the cabinet has been appointed for the sole purpose of performing the duties of a full or limited conservatorship; or

(b) Guardian or limited guardian in all other designations or combinations thereof.

Section 12. Client Placement and Movement. (1) To ensure a ward is receiving the least restrictive and highest quality services from the most appropriate provider, the Field Services Branch shall develop and maintain a working knowledge of:

- (a) Services;
- (b) Providers; and
- (c) Facilities in the community.

(2) The Field Services Branch shall consider various ancillary and support services and select a provider that best meets the needs of the individual ward.

(3) If the cabinet has responsibility for living arrangements of the ward, the Field Services Branch shall ensure that the ward is living in the most appropriate, least restrictive environment taking into consideration the ward's wishes and needs.

(4) A move to a new environment, including an intensive care facility for intellectual disabilities~~[mental-retardation]~~, nursing facility, or psychiatric hospital, may only be made after the Field Services Branch:

(a) Evaluates physical and mental health needs by reviewing recommendations of treating professionals; and

(b) Determines care options.

(5) The Field Services Branch shall, upon the move to a new environment:

- (a) Attend an initial care plan meeting; and
- (b) Visit the ward:
  1. Within thirty (30) days of the move; and
  2. Within ninety (90) days of the move for a follow-up visit.

(6) The Field Services Branch shall consider:

(a) Any involuntary or long-term institutional placement of a ward to:

1. Minimize the risk of substantial harm to the ward; and
2. Obtain the most appropriate care; and

(b) The ward benefits and entitlements driven by level of care in the placement.

(7) The Field Services Branch shall notify the facility where the ward resides if the ward is listed on the Sex Offender Registry, has

committed a sex crime or a crime against a minor, or is otherwise required to be on the registry pursuant to KRS 17.500 through 17.540.

Section 13. Supports for Community Living (SCL). (1) Unless a ward has been previously referred, the Field Services Branch shall refer a ward with an intellectual disability~~[a mental-retardation]~~ or developmental disability to DBHDID~~[DMHDDAS]~~ for determination of Supports for Community Living (SCL) services in accordance with 907 KAR 1:145.

(2) The division shall monitor and access care in which a ward receives through SCL services.

Section 14. Bed Holds. (1) If the Field Services Branch receives notification that a ward is leaving a Medicaid nursing level of care or Medicaid Waiver program or has left a facility or placement, the Field Services Branch may:

(a) Give verbal authorization for the bed to be reserved; and

(b) Authorize bed hold days in excess of the period covered by Medicaid, or other funding source, only if the availability of the ward's funds has been verified with the Fiduciary Services Branch.

(2) If authorizing a bed hold, the Field Services Branch shall:

(a) Verify the verbal authorization of a bed hold with:

1. The facility holding the bed; and
2. Written verification including the:
  - a. Client's name;
  - b. Date phone call was placed;
  - c. Date reservation begins;
  - d. Date reservation ends; and
  - e. Rate per day; and

(b) Email the Fiduciary Services Branch that a bed hold has been completed.

(3) If a ward is in a public assistance eligible facility such as a licensed personal care home or family care home, and moves to a temporary stay at a hospital, psychiatric hospital-state and private, or nursing facility, the ward may be entitled to retain the public assistance for three (3) months in accordance with 42 U.S.C. 1382(e)(1)(G) and 20 C.F.R. 416.212.

(4) In order to continue public assistance the following requirements shall be met:

(a) A bed hold has been approved;

(b) A physician certifies in writing within ten (10) calendar days of admission that the non Supplemental Security Income (SSI) recipient is unlikely to be confined for longer than ninety (90) full, consecutive days; and

(c) Fiduciary Services Branch provides the DCBS with the following:

1. Notification of the temporary admission; and

2. The physician statement as specified in paragraph (b) of this subsection.

(5) If the bed hold is not verified or a physician statement is not received within ten (10) calendar days, the ward shall lose eligibility for public assistance and all public assistance shall be returned by the Fiduciary Services Branch to the Kentucky State Treasury from the date of admission.

(6)(a) The Field Services Branch may only authorize a bed hold for a ward residing in other levels of care by verifying and documenting the availability of the ward's funds with the Fiduciary Services Branch.

(b) If funds are verified by the Fiduciary Services Branch, the Field Services Branch shall verify the verbal authorization of a bed hold as specified in subsection (2) of this section.

Section 15. Moving to a New Region. (1) If a ward is being considered for placement from one (1) service region to another, the sending region's Field Services Branch shall consult with the receiving service region's Field Services Branch to determine if the proposed placement meets the needs of the ward.

(2) If placement is appropriate, the Field Services Branch shall request that the receiving region's Field Services Branch visit and assess the ward within forty-five (45) calendar days of placement to ensure the ward is adjusting to the placement.

(3) Within seven (7) working days of the visit, the receiving

region's Field Services Branch shall make a recommendation for case file transfer to the sending region as to the ward's adjustment to the placement.

(4) If the ward is not adjusting to placement in the receiving service region:

(a) The sending service region shall consult with the receiving service region for direction and possible resolution; and

(b) The receiving service region may revisit the ward to monitor the placement.

(5) If the ward is adjusting and placement is appropriate, the Field Services Branch shall request a transfer of the ward's case to the receiving region with the receiving region's approval.

(6) If the transfer of the case is considered appropriate, the Field Services Branch in the sending region shall:

(a) Review the ward's file;

(b) Ensure the annual report is current; and

(c) Forward the ward's records and notification of transfer date to the Field Services Branch of the receiving region.

(7) The Field Services Branch in the receiving region shall:

(a) Notify the court of new place of residence and transfer;

(b) Assign a Field Services Worker in the new region; and

(c) Ensure health insurance and Medicare Part D are in place and available.

(8) If any of the following apply, the ward shall not be transferred:

(a) Limited appointment that expires within the next sixty (60) days of transfer;

(b) If there are legal actions pending in the current service region including the sale of real or personal property;

(c) A relative or other interested party is petitioning to be appointed successor guardian or conservator;

(d) The ward is in a psychiatric hospital voluntarily or by commitment for a period of less than 360 days; or

(e) The ward has been approved for SCL funding and is awaiting a permanent placement.

(9) If the ward is still in an emergency appointment, the case shall not be transferred without the sending region's Field Services Branch reviewing the facts and making a determination if the transfer will be accepted by the court in the receiving service region.

Section 16. Personal Belongings. (1) If a ward is moved from one (1) facility to another, the Field Services Branch shall ensure that all personal belongings are safely moved with the ward within thirty (30) calendar days of the move.

(2) If a ward is moved from a facility to a psychiatric hospital and the ward's personal belongings cannot be moved with the ward, the Field Services Branch shall:

(a) 1. Determine if the prior facility charges a fee for storage; and

2. Through completion of a budget with the Fiduciary Services Branch, the availability of the ward's funds to cover the expense; and

(b) 1. Store the belongings; or

2. Dispose of the belongings as specified in Section 6(10) of this administrative regulation.

Section 17. Physical Health Care Needs of a Ward. (1) The Field Services Branch may approve health care, treatment, or services of a ward as authorized by a court.

(2) The Field Services Branch may approve birth control measures for the ward and authorize intrusive measures such as insertion of intrauterine devices or birth control implants if:

(a) A medical opinion indicates that there is minimal risk for the ward; and

(b) The procedure is considered to be the least invasive and most appropriate method available.

(3)(a) The Field Services Branch may discuss with the ward or the ward's relative or other interested party the need for surgery or treatment if:

1. It is in the best interest of the ward; and

2. The ward's relative or other interested party has been involved with the ward's case.

(b) Discussion may include the possibility of the ward's relative or other interested party petitioning the court to be appointed as full guardian, guardian for personal affairs, or as limited guardian for medical affairs only.

(4) Unless emergency surgery or treatment is necessary to preserve the ward's life or to prevent serious impairment of the ward's physical health, the Field Services Branch shall seek, pursuant to KRS 387.660(3), the approval of a court for the:

(a) Removal of a bodily organ;

(b) Amputation of a limb; or

(c) Abortion or sterilization.

(5) The Field Services Branch shall document the health care services provided in the ward's case record including:

(a) Procedure to be performed;

(b) Name of the physician performing the procedure;

(c) Location where the procedure will be performed;

(d) Reason the procedure is needed;

(e) Less intrusive measures that have been tried, if applicable; and

(f) Date the procedure is to be performed.

Section 18. Mental Health Care Needs of the Ward. (1) The Field Services Branch shall seek court approval for the following procedures:

(a) Electro-Convulsive Therapy (ECT); or

(b) Psychosurgery pursuant to KRS 387.660(3).

(2) The Field Services Branch may co-sign a provider's voluntary admission form if a ward is admitted to a mental health or intellectual disability~~[mental-retardation]~~ facility and if the:

(a) Ward voluntarily signs the provider's voluntary admission form;

(b) Admitting physician deems the ward to be capable of voluntarily consenting to the treatment; and

(c) ~~The~~ Cabinet is authorized by the court to make medical decisions for the ward.

(3) If there is no other person willing to petition the court for the ward to be involuntarily admitted, and the ward meets criteria for involuntary admission to a mental health facility or intellectual disability~~[mental-retardation]~~ facility, the Field Services Branch shall follow the procedures and may initiate the Administrative Office of the Court's Petition for Involuntary Hospitalization:

(a) In accordance with KRS Chapters 202A and 202B; and

(b) If the Field Service Branch determines it is in the best interest of the ward.

Section 19. Nonemergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization or Abortion. (1)(a) Unless emergency surgery or treatment is necessary to preserve the ward's life or prevent serious impairment of the ward's physical health, the Field Services Branch shall seek the approval of the court for the nonemergency removal of a bodily organ and the nonemergency amputation of a limb, sterilization or abortion pursuant to KRS 387.660(3).

(b) The nonemergency removal of a bodily organ may include an organ such as the:

1. Eye;

2. Kidney;

3. Liver;

4. Lung; or

5. Reproductive organs.

(c) The nonemergency amputation of a limb may include:

1. Arm;

2. Foot;

3. Hand; or

4. Leg.

(2) The Field Services Branch may discuss with the ward, ward's relative or other interested party:

(a) The disposition of an amputated limb; or

(b) Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(3) In order to obtain approval of the court, the Field Services Branch shall obtain written statements from two (2) physicians, who have evaluated the ward and who are not in practice together

to include the following:

- (a) Ward's name;
- (b) Date when the statement was written;
- (c) Physician's name, area of practice, address, telephone number, and signature;
- (d) Date the physician last evaluated the ward's condition;
- (e) Procedure to be performed;
- (f) Person who will perform the procedure;
- (g) Location where the procedure will be performed;
- (h) Date of the procedure;
- (i) Ward's prognosis if the procedure is performed;
- (j) Ward's prognosis if the procedure is not performed;
- (k) Risks of performing the procedure;
- (l) Physician's professional opinion as to why the benefits of having the procedure outweighs the risks involved; and
- (m) Alternative and less intrusive procedures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance with the OLS in anticipation of a motion and order that includes the:

- (a) Ward's name;
- (b) Date of adjudication;
- (c) Date the cabinet was appointed;
- (d) Type of appointment and any limitations;
- (e) County having current jurisdiction over the case;
- (f) Court's case number;
- (g) Procedure to be performed;
- (h) Reason the procedure needs to be performed;
- (i) Person who will perform the procedure;
- (j) Location where the procedure will be performed;
- (k) Date of the procedure;
- (l) Reference to the two (2) physicians who support the need for the procedure, who have evaluated the ward and who are not in practice together;
- (m) Names, relationships, and mailing addresses of relatives to be notified of the court hearing; and
- (n) Disposition of the amputated limb, if applicable.

(5) The Field Services Branch shall forward to the OLS the following:

- (a) The request for legal assistance;
- (b) A copy of the district court's AOC-785, Disability Judgment;
- (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
- (d) The two (2) physicians' statements.

(6) If the motion and order have been received, the Field Services Branch shall file the following information with the court in the case:

- (a) The motion and order prepared by OLS;
- (b) The two (2) physicians' statements;
- (c) An AOC-775, Order of Appointment of Guardian, available at the court of a ward's disability case; and
- (d) An AOC-785, Disability Judgment, available at the court of a ward's disability case.

(7) If required by the court, the Field Services Branch shall attend the hearing on the motion and order.

(8) The Field Services Branch shall provide a certified copy of the signed order to the:

- (a) Hospital where the surgery or treatment is to be performed; or

(b) Facility where the ward is residing so that the order can be sent with the ward to the hospital.

(9) The Field Services Branch shall grant permission for the procedure that has been approved by the court.

(10) The Field Services Branch shall arrange disposition of the amputated limb as specified in subsection (2)(a) of this section~~[19(2)(a) of this administrative regulation]~~.

(11) The Field Services Branch shall include an affidavit and other documentation of surgery in the next annual report to the court.

Section 20. Emergency Removal of a Bodily Organ, Amputation of a Limb, Sterilization, or Abortion. (1) If an emergency procedure needs to be performed within twenty-four

(24) hours of notification of need from a physician to preserve the life or prevent serious impairment of the physical health of a ward, the Field Services Branch shall not seek court approval.

(2) The Field Services Branch shall notify the division of the need for an emergency procedure.

(3)(a) The Field Services Branch shall document the emergency need and time table for the procedure and request an affidavit of emergency need from the physician.

(b) The Field Services Branch may request a second opinion and an affidavit from the second physician to verify the need for surgery is an emergency.

(c) The Field Services Branch shall review the affidavit if the affidavit is received and authorized as an emergency procedure as appropriate.

(d) The Field Services Branch may discuss with the ward, ward's relative, or other interested party:

- 1. The disposition of an amputated limb; or
- 2. Keeping the amputated limb for burial in accordance with 910 KAR 2:030, Section 12(6).

(e) The Field Services Branch shall include the affidavit and other documentation to the event in the next annual report to the court.

Section 21. Involuntary Mental Health Treatment for Wards.

(1)(a) If it is determined that a ward is in need of mental health hospitalization, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from a mental health professional or hospital.

(b) If the ward refuses to seek mental health services, and no other person is willing or able to file the petition, the Field Services Branch may:

- 1. Counsel community partners to petition; or
- 2. Initiate a petition for involuntary hospitalization if the ward meets the following criteria for involuntary admission for mental health treatment:

- a. The ward has a mental health diagnosis;
- b. The ward can benefit from mental health treatment;
- c. The involuntary admission is the least restrictive form of treatment; and
- d. The ward presents a danger or threat of danger to self or others.

(2) If the cabinet is the petitioner, the Field Services Branch shall:

- (a) Attend the mental inquest hearing; and
- (b) Testify at the request of the county attorney.

Section 22. Involuntary Intellectual Disability~~[Mental Retardation]~~ Treatment for a Ward. (1) If it is determined that a

ward is in need of mental retardation treatment, the Field Services Branch shall suggest to the ward that he or she voluntarily seek treatment from an intellectual disabilities~~[a mental retardation]~~ professional.

(2) If the ward refuses to seek intellectual disabilities~~[mental retardation]~~ treatment, and there is no other person willing or able to file the petition, the Field Services Branch may file a petition if the ward meets the following criteria for involuntary admission for intellectual disabilities~~[mental retardation]~~ treatment:

- (a) The ward has an intellectual disability~~[a mental retardation]~~ diagnosis;
- (b) The involuntary admission is the least restrictive form of treatment; and

(c) The ward presents a danger or threat of danger to self or others if not admitted to an intermediate care facility for mental retardation (ICF/MR).

(3) In the case of an involuntary admission to an intellectual disabilities~~[a mental retardation]~~ facility, the Field Services Branch shall:

- (a) Request approval from the Commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities~~[Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS)]~~ for the ward's admission to the facility; and
- (b) Notify the Division of Protection and Advocacy.

(4) If the involuntary admission is granted, the Field Services Branch shall follow procedures as set out in KRS 387.660(1) for notification to the court.

(5) If the cabinet is the petitioner, the Field Services Branch shall:

- (a) Attend the mental inquest hearing; and
- (b) Testify at the request of the county attorney.

Section 23. Electro-convulsive Therapy and Psychosurgery. (1) Unless it is a necessary emergency medical procedure to preserve life or prevent serious impairment of the physical health of the ward, the Field Services Branch shall, for all forms of psychosurgery, seek approval from the court pursuant to KRS ~~387.660(3)~~[387.600(3)].

(2) The Field Services Branch shall inform the division of the requested procedure.

(3)(a) The Field Services Branch shall obtain written statements from two (2) psychiatrists who have evaluated the ward and who are not in practice together.

(b) The written statements shall include the following:

1. Ward's name;
2. Date when the statement was written;
3. Psychiatrist's name, area of practice, address, telephone number, and signature;
4. Last date the psychiatrist evaluated the ward's condition face-to-face;
5. Procedure to be performed;
6. Person who will perform the procedure;
7. Location where the procedure will be performed;
8. Date of the procedure;
9. Ward's prognosis if the procedure is performed;
10. Ward's prognosis if the procedure is not performed;
11. Risks of performing the procedure;
12. Psychiatrist's professional opinion as to why the benefits of having the procedure outweigh the risks involved; and
13. Alternative and less intrusive measures that have been performed.

(4) The Field Services Branch shall prepare a written request for legal assistance to the OLS that includes the:

- (a) Ward's name;
- (b) Date of adjudication;
- (c) Date the cabinet was appointed;
- (d) Type of appointment and any limitations;
- (e) County having current jurisdiction over the case;
- (f) Court's case number;
- (g) Procedure to be performed;
- (h) Reason the procedure needs to be performed;
- (i) Person who will perform the procedure;
- (j) Location where the procedure will be performed;
- (k) Date of the procedure;
- (l) Reference to the two (2) psychiatrists who support the need for the procedure; and

(m) Names, relationships, and mailing addresses of relatives to be notified of the hearing.

(5) Upon the completion of the written request, the Field Services Branch shall send to OLS the following and request that OLS prepare a motion and order requesting the consent for treatment:

- (a) Request for legal assistance;
- (b) A copy of the district court's AOC-785, Disability Judgment;
- (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
- (d) Two (2) psychiatrists' statements.

(6) Once the motion and order requesting the consent for treatment have been received by the guardianship local office, the Field Services Branch shall file the following information with the court in the case:

- (a) Motion and order prepared by OLS;
  - (b) Two (2) psychiatrists' statements;
  - (c) A copy of the district court's AOC-775, Order of Appointment of Guardian; and
  - (d) A copy of the district court's AOC-785, Disability Judgment.
- (7) If required by the court, the Field Services Branch shall

attend the hearing on the motion and order.

(8) The Field Services Branch shall provide a certified copy of the signed order by the court to the hospital where the procedure is to be performed or to the facility where the ward is residing so that the order can be sent with the ward to the hospital.

(9) The Field Services Branch shall include the following in the next annual report to the court:

- (a) The requests for consent for treatment;
- (b) Action taken by the court; and
- (c) Treatment provided and resulting outcomes.

Section 24. Life Saving Measures. (1) The procedure for the Field Services Branch to request a change in code status from Full Code (FC) to Do Not Resuscitate (DNR) for a ward for whom the cabinet has the authority to make health care decisions shall include:

(a)1. Being advised by an attending physician, after clinical examination, that the ward~~[has a]~~:

- a. Has a terminal condition;
- b. Is permanently unconscious; or
- c. Has a comorbid condition, in which two (2) or more coexisting medical conditions compromise the ward's chance of recovery or of benefiting from active treatment; and

2. The physician's request~~[physician requests]~~ that the ward's code status be changed to DNR;

~~(b)[Ensuring that the ward's code status remains FC until consultation has been sought with one (1) of the DCBS Adult Medical Support Section (AMSS) nurse consultants or the Health Care Advisory Committee to change the ward's code status to DNR; (c)]~~ Sending the DNR Request Form to be completed and signed by two (2) physicians, one (1) of whom shall be the attending physician; and

(c)[(d)] Notifying and sending the signed DNR Request Form and diagnostic documentation or testing that documents the ward's condition is terminal or permanently unconscious to one (1) of the [AMSS] nurse consultants.

(2) The~~[DCBS AMSS]~~ nurse consultant shall determine if the ward meets criteria according to the cabinet's protocol or defer the request to change the ward's code status to DNR to the Guardianship~~[Health Care]~~ Advisory Committee.

(3) The nurse consultant~~[AMSS]~~ shall notify the Field Services Branch of the determination that was made on the ward's code status.

(4) Upon receiving the determination for DNR, in support of changing the ward's code status to DNR, the Field Services Branch shall complete a hospital's or Emergency Medical Services' (EMS) Kentucky Emergency Medical Services Do Not Resuscitate Order.

(5) The Field Services Branch shall forward a copy of the approval and the DNR Order to all involved facilities.

(6) The Field Services Branch shall notify all involved facilities verbally of the DNR Order.

(7) If the ward's medical condition improves significantly, any party involved, including the Field Services Branch, may review and make a request to change the code status.

Section 25. Death of a Ward. (1) If a ward dies, the Field Services Branch shall contact the Fiduciary Services Branch within one (1) working day upon notification of the death and provide the:

- (a) Name of the ward;
  - (b) Date of death;
  - (c) Place of death;
  - (d) Last residence;
  - (e) Name, address and telephone number of the funeral home;
- and

(f) Assets held by the field office or current placement.

(2) The Field Services Branch may contact the preferred funeral home and inform them of:

- (a) The ward's death and location of the body;
- (b) Any known relative or other interested party;
- (c) Any known prepaid burial assets; and
- (d) The fact that the cabinet shall not be held responsible for any burial arrangements or funeral expenses.

(3) The Field Services Branch shall ensure that a relative or

other interested party is notified of the ward's death and funeral home.

(4) If there are no funds available for burial, the Field Services Branch shall attempt to contact a known relative or other interested party to determine their interest and ability to assist with burial expenses.

(5) The Field Services Branch may also seek assistance from the county Fiscal Court or local funeral homes.

(6) As the cabinet's decision-making authority ceases when the ward dies, the Field Services Branch shall not grant permission for:

- (a) Autopsies; or
- (b) Organ or tissue donations.

(7) If a ward dies in unusual or unknown circumstances, the Field Services Branch shall:

- (a) Make a referral to:
  - 1. APS; and
  - 2. County coroner, relative, or other interested party who may order an autopsy; and
- (b) Complete and submit to the department a Notice of Adult Fatality.

(8) If the Field Services Branch determines the ward's hard copy file is complete or no later than six (6) months from date of death, the file shall be forwarded by person or mail to the Fiduciary Services Branch.

Section 26. Cremations. (1) Pursuant to KRS 367.97524, a cremation authorization form shall be signed by an authorizing agent clearly stating the disposition of the cremated remains.

(2) Pursuant to KRS 367.97527, a ward may have established a prepaid cremation account prior to being determined to be disabled in order to specify how personal remains shall be handled.

(3) Other persons legally entitled to order the cremation and disposition of the adult's human remains shall be as listed in KRS 367.97501(1).

(4)(a) The Field Services Branch shall not sign a cremation authorization, or be allowed to establish a prepaid cremation account for a ward.

(b) If the ward funded a pre-paid cremation account prior to being adjudicated disabled, the ward's desire to be cremated shall be honored.

(c) If the ward has not signed a preneed authorization and there are no adult relatives who are willing to serve as the authorizing agent, the corner may seek an order in district court authorizing the ward's cremation.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Initial Field Visit Report", [edition] 3/09;
- (b) "DNR Request Form", [edition] 3/09; and
- (c) "Notice of Adult Fatality", [edition] 3/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBORAH S. ANDERSON, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 7, 2014 at 2 p.m.

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, tricia.orme@ky.gov, phone 502-564-7905; fax 502-564-7573.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Phyllis Sosa

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the service provisions for adult guardianship.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to administer services to

adults the Cabinet has been appointed as guardianship.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 387.600(1) authorizes the courts to appoint the Cabinet for Health and Family Services as guardian to individuals who have been determined to have a disability and are unable to make their own decisions. KRS 194A.050(1) authorizes the Cabinet for Health and Family Services to adopt regulations as necessary to implement programs. This administrative regulation establishes standards of service provision to individuals who have been appointed to the Cabinet as a ward of the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide guidance to the Cabinet and Department on the provision of services and staff requirements in providing for the needs of individuals appointed to the Cabinet.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to 910 KAR 2:040 updates definitions, and the Life Saving Measures, Do Not Resuscitate (DNR) requirements to allow a more timely decision for the hospitals and doctors involved in the case and removes responsibility from the Department for Community Based Services for review placing the review with an available reviewer within the Cabinet who has the court ordered responsibility for decisions.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the Life Saving Measures regarding Do Not Resuscitate to provide the doctors and hospitals a more timely review of documentation and decision.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies and establishes standards for the provision of services to individuals appointed to the Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide guidance to the Cabinet staff to implement the requirements of KRS 387.600(1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services, Department for Aging and Independent Living, Department for Community Based Services, over 3,600 wards of the state, hospitals, doctors and health care providers requesting DNR's on patients that are wards of the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DAIL will implement the DNR review process and obtain guidance from other Cabinet entities as needed to expedite a decision regarding a DNR.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): DAIL will review documentation submitted by the doctors and hospital staff to ensure the ward meets the criteria for DNR prior to submitting the request for additional review by a Cabinet nurse consultant to determine the approval or denial of a DNR. The wards that are being considered for DNR will have the decision made in a more timely manner and will either determine that a DNR will not be initiated or the individual that does meet the criteria will not have life prolonging procedures that are painful and ultimately don't sustain life. The doctors and hospital staff will receive approval or denial in a timely manner and will know how to proceed when an individual has coded.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs to implement this amended

regulation.

(b) On a continuing basis: No additional costs to implement this amended regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The Guardianship program is funded 100 percent through state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 387.600(1), KRS 202A, 202B, 209.990, 210.290(3), (4), 387.97524, 367.97527, 387.500-387.990, 389A.010, 389.015, 20 C.F.R. 416.212, 42 U.S.C. 1382(e)(1)(G)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years: This administrative regulation will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? For FY 2014, the program will cost \$6,314,200 in state general funds.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, \$6,314,200 in state general funds will be required to administer this program.

Note: if specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation defines terms used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:

- (a) One (1) college semester hour; or
- (b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.

(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:

- (a) The offer or counteroffer is accepted; and
  - (b) An executory contract exists.
- (3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:

- (a) Is contrary to fact;
  - (b) Leads a person to a mistaken belief or conclusion; or
  - (c) Knowingly made a representation that is contrary to fact.
- (4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:

- (a) Is:
  - 1. Known to be false; or
  - 2. Made recklessly;
- (b) Is made to induce an act;
- (c) Induces an act in reliance on the misrepresentation; and
- (d) Causes injury.

(5) ["Guaranteed sales plan" means an offer or solicitation:

- (a) To guarantee the sale of an owner's real estate; or
- (b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(6) "Prize" means an item of value that is:

(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and

(b) Not a complimentary:

1. Refreshment, including a soft drink or snack, that is offered to the general public; or

2. Gift that:

- a. Has a value less than \$100;
- b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and
- c. Was not offered prior to closing.

(7) "Required disclosure" means:

(a) In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;

(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and

(c) In television advertising, that the disclosure shall:

- 1. Be verbal and clearly understandable; or
- 2. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters:

a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or

b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

{8}] "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 24, 2014, at 10:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ronnie J. Harris Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the terms used in 201 KAR 11.

(b) The necessity of this administrative regulation: This regulation is necessary to define the terms used in 201 KAR 11.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation defines terms used in 201 KAR 11 as required under KRS 324.281.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the terms used in 201 KAR 11.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the subject matter that this regulation covers by removing definitions that are no longer applicable and relocating definitions to clarify the regulation.

(b) The necessity of the amendment to this administrative regulation: To clarify the content of 201 KAR 11.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment simply removes a definition that no longer applies and moves two definitions to prevent confusion.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate current confusion.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Real Estate Licensees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No impact

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the



entities identified in question (3): This regulation will increase clarity and remove an obsolete definition.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Commission

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.282

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be no fiscal impact.

#### GENERAL GOVERNMENT CABINET Kentucky Real Estate Commission (Amendment)

**201 KAR 11:105. Advertising listed property; advertising public information about specific property - when consent and authorization of owner or principal broker is required.**

RELATES TO: KRS 324.117, 324.160(4)(w), (6)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Kentucky Real Estate Commission to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes certain standards for advertising real estate.

Section 1. A real estate broker shall not offer real estate for sale or lease without the consent of the owner. If promoting or advertising the real estate to the general public, the broker shall

have a written listing agreement signed by the owner. After a closing has occurred, a buyer's agent may advertise his or her role in the sale. The advertisement shall conspicuously state that his or her participation was as the buyer's agent~~[A buyer's agent may advertise or promote his or her participation in the sale after a binding contract is created].~~

Section 2. A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.

Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.

(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.

(3) The requirements in this section shall apply to advertisements for listed property only.

Section 4. (1) An advertisement by a licensee shall be approved by the principal broker with whom the licensee is affiliated or by an individual designated by the principal broker to approve the advertisement.

(2) A principal broker shall require his or her licensee to:

(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;

(b) Provide the owner-client with written notice of these advertising requirements; and

(c) Obtain the owner-client's written agreement to comply with the advertising requirements.

Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.

Section 6. A licensee may advertise the listings of another real estate brokerage company if:

(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and

(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 24, 2014, at 10:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ronnie J. Harris Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines the duties of a licensee pertaining to advertising real estate for sale to the general public.

(b) The necessity of this administrative regulation: This regulation is necessary to ensure that all signage and promotion of real estate is in compliance with the wishes of the consumers and is not misleading or confusing to the public and to other licensees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation clearly defines and outlines requirements under KRS 324.117 which mandates that real estate advertising must not be false, misleading or deceptive.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clarifies how a licensee may promote certain real estate and what requirements they must meet for such promotion. Without this regulation, there may be confusion among the public and licensees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will clarify the subject matter that this regulation covers.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to clarify the timing and content when licensees advertise their involvement as buyer's agents.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment simply clarifies the timing and content when licensees advertise their involvement as buyer's agents.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate current confusion when licensees advertise their involvement as buyer's agents.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Real Estate Licensees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If the licensee chooses to advertise their role as a buyer's agent they must meet the timing and content requirements of the regulation, as amended.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity in their roles in transactions and elimination of existing confusion will be the resulting benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular

group of people.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Commission

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.282

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be no fiscal impact.

**GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(Amendment)**

**201 KAR 11:121. Improper conduct.**

RELATES TO: KRS 324.010(3), 324.160, 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. Definitions. (1) "Guaranteed sales plan" means an offer or solicitation:

(a) To guarantee the sale of an owner's real estate; or

(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(2) "Required disclosure" means:

(a) In print advertising, the required disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;

(b) In radio advertising, the required disclosure shall be verbal and clearly understandable; and

(c) In television advertising, the required disclosure shall be:

1. Verbal and clearly understandable; or

2. Written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters which are:

a. Eighteen (18) video scan lines in size for letters which are all upper case; or

b. Twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

Section 2. The following shall be improper for any licensed agent:

(1) To accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

(2) It shall not be improper conduct to advertise the fee or other compensation the licensed agent agrees to charge for his services.

(3) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. This provision shall not be construed to permit otherwise unlawful discrimination.

(4) To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

- (a) Loyalty;
- (b) Obedience to lawful instructions;
- (c) Disclosure;
- (d) Confidentiality;
- (e) Reasonable care and diligence; and
- (f) Accounting.

(5)(a) To advertise a guaranteed sales plan without the required disclosure, as described in Section 1 of this administrative regulation, of:

1. Whether a fee is charged for participation;

2. Whether the real estate shall meet qualifications for participation;

3. Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and

4. Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee[as defined in 201 KAR 11:011].

(6) To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions.

(7) To serve in the dual capacity of a real estate licensee and loan originator, if the real estate licensee, while acting in that capacity:

(a) Fails to disclose this dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities;

(b) Fails to contact the Department of Financial Institutions to register and pay the one (1) time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing;

(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed below:

1. Taking information from the borrower and filling out the application;

2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;

3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;

4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;

5. Initiating or ordering a verification of employment and verifications of deposit;

6. Initiating or ordering a request for mortgage and other loan verifications;

7. Initiating or ordering appraisals;

8. Initiating or ordering an inspection or engineering report;

9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;

10. Assisting the borrower in understanding and clearing credit problems;

11. Maintaining regular contact with the borrower, realtors, and lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;

12. Ordering legal documents;

13. Determining whether the property was located in a flood zone or ordering that service; and

14. Participating in the loan closing;

(d) Requests or receives compensation that is not commensurate with the actual work performed; or

(e) Requests or receives compensation for work that is not actually performed by him or her. ~~[(8) A broker licensed in Kentucky to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.]~~

JIM HUFF, Chairperson

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 24, 2014, at 10:00 a.m., in the boardroom of the Kentucky Real Estate Commission located at 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ronnie J. Harris, Jr. General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone 502-429-7250, fax 502-429-7246.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ronnie J. Harris Jr

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation outlines improper conduct of a licensee.

(b) The necessity of this administrative regulation: This regulation is necessary to describe some activities that would be improper.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation describes some activities that would be improper as required by KRS 324.281

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation describes some activities that are considered improper.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Clarify the subject matter that this regulation covers and remove a provision that no longer applies.

(b) The necessity of the amendment to this administrative regulation: To clarify the content when licensees advertising guaranteed sales plans and remove a provision that no longer applies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment simply clarifies the required content when licensees advertise guaranteed sales plans and

removes a provision that no longer applies.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will eliminate current confusion when licensees advertise guaranteed sales plans and removes a provision that no longer applies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Real Estate Licensees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: If the licensee chooses to advertise guaranteed sales plans they must include the required information of the regulation, as amended.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarity in their roles in transactions and elimination of existing confusion will be the resulting benefits.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are or will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Commission

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.282

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be no fiscal impact.

#### TOURISM, ARTS AND HERITAGE CABINET Kentucky Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 1:201. Taking of fish by traditional~~[Recreational]~~ fishing methods~~[limits]~~.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to promulgate administrative regulations for creel and size limits for fish. This administrative regulation establishes fish size limits, daily creel limits, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure, bare hook, or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material.

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Culling" means releasing a previously caught fish that an angler has kept as a part of a daily creel limit and replacing it with another fish of the same species.

(4) "Daily creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing.

(5) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(6) "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing.

(7) "Processed fish" means a fish that has been gutted and head removed.

(8) "Release" means to return a fish to the water from which it was taken immediately after removing the hook.

(9) "Single hook" means a hook with no more than one (1) point.

(10) "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(11) "Slot limit" means a size range of a fish species that shall be released by an angler.

(12) "Traditional fishing methods" means the act of taking or attempting to take for noncommercial purposes any freshwater fish species using:

(a) Hook and line in hand; or

(b) Rod in hand.

(13) "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide~~[Size] Limits~~, ~~Daily Creel Limits,~~ and ~~Requirements~~~~[Possession Limits]~~. (1) A person taking fish by traditional methods fishing ~~from~~~~[in]~~ public or private waters shall observe the following daily creel limits and size limits, except as established in Section 3 of this administrative regulation or pursuant to 301 KAR 1:180.

(a) Black bass daily creel limit, six (6).

1. Largemouth bass and smallmouth bass size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass, no size limit.

(b) Rock bass daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge daily creel limit, one (1); size limit, thirty (30) inches.

(e) Chain pickerel daily creel limit, five (5); no size limit.  
 (f) White bass and hybrid striped bass daily creel limit, singly or in combination, fifteen (15); size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass daily creel limit, five (5); size limit, fifteen (15) inches.

(h) Crappie daily creel limit, thirty (30); no size limit.

(i) Trout.

1. No culling statewide.

2. Rainbow trout and brown trout daily creel limit, singly or in combination, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12)-inch size limit on brown trout.

3. No size limit on rainbow trout.

4. Twelve (12) inch size limit on brown trout.

5. Brook trout, catch and release only.

(j) Redear sunfish daily creel limit, twenty (20); no size limit.

(k) Yellow bass daily creel limit, thirty (30); no size limit.

(2) The possession limit shall be two (2) times the daily creel limit, except as established in Section 3 of this administrative regulation.

(3) A person shall release grass carp caught from a lake owned or managed by the department.

(4) A person shall release any:

(a) Lake sturgeon; or

(b) Alligator gar.

(5) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species if a person already possesses the daily creel limit for that species.

(6) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(7) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of tournament caught fish:

(a) At the weigh-in site;

(b) At the release site; or

(c) While transporting live fish from a remote weigh-in site back to the water body of origin for release.

(8) A fishing tournament organizer or representative, excluding a tournament angler, may possess more than the daily creel limit of unprocessed tournament caught fish that expired at the sites established in subsection (7) of this section for subsequent disposal by one (1) of the following methods:

(a) Bagged, sealed, and placed in a garbage dump;

(b) Donated to a charity for the purposes of human consumption; or

(c) Transferred to a conservation officer or another agent of the department.

(9) A person shall not remove the head or tail of any fish for which a size limit or daily creel limit exists while:

(a) Fishing;

(b) On the shoreline; or

(c) On the water.

(10) A person may possess sport fish below the size limit or beyond the possession limit if the person:

(a) Obtains the fish from a licensed fish propagator or other legal source; and

(b) Retains a receipt or other written proof that the fish were legally acquired.

(11) A person shall release all caught trout unless the person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements pursuant to KRS 150.170(2); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

(12) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait:

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) A similar organic bait substance including dough bait and putty or paste-type bait designed to attract fish by taste or smell.

(13) The fishing season shall be open year round.

Section 3. Exceptions. All other provisions of this administrative regulation shall apply to the bodies of water listed in this section, with the exceptions established in subsections (1) through (76)[(75)] of this section:

(1) AJ Jolly Lake. A person shall release all flathead catfish.

(2) Bad Branch, Letcher County. A person shall only fish with artificial bait with a single hook.

(3) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger size limit, fourteen (14) inches.

(4) Barren River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth and smallmouth bass size limit, fifteen (15) inches, except that a person may keep one (1) bass under fifteen (15) inches within a daily creel limit.

(c) Barren River Lake shall extend up:

1. Barren River to the Highway 100 bridge;

2. Long Creek to the Highway 100 bridge;

3. Beaver Creek to the Highway 1297 bridge;

4. Skaggs Creek to the Mathews Mill Road bridge; and

5. Peter Creek to the Peter Creek Road bridge.

(5) Beaver Lake, Anderson County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

(6) Bert Combs Lake, Clay County. A person shall not possess shad or use shad as bait.

(7) Beshears Lake, Caldwell County. Channel catfish size limit, twelve (12) inches.

(8) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad as bait.

(b) Channel catfish size limit, twelve (12) inches.

(9) Briggs Lake, Logan County. A person shall not possess shad or use shad as bait.

(10) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Muskellunge size limit, thirty-six (36) inches.

(c) Crappie size limit, nine (9) inches.

(11) Bullock Pen Lake, Grant County. Channel catfish size limit, twelve (12) inches.

(12) Carnico Lake, Nicholas County. Largemouth bass size limit, fifteen (15) inches.

(13) Carpenter Lake, Daviess County. A person shall not possess shad or use shad as bait.

(14) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

(15) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass.

1. There shall be a slot limit between twelve (12) and fifteen (15) inches.

2. The daily creel limit shall not include more than one (1) fish greater than fifteen (15) inches.

(c) A person shall not possess shad or use shad as bait.

- (16) Cave Run Lake.  
 (a) Largemouth bass. There shall be a slot limit between thirteen (13) and sixteen (16) inches.  
 (b) Smallmouth bass size limit, eighteen (18) inches.  
 (c) Muskellunge size limit, thirty-six (36) inches.  
 (17) Cedar Creek Lake, Lincoln County.  
 (a) Largemouth bass size limit, twenty (20) inches; daily creel limit, one (1).  
 (b) Channel catfish size limit, twelve (12) inches.  
 (c) A person shall not possess shad or use shad as bait.  
 (18) Chimney Top Creek, Wolfe County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.  
 (19) Corinth Lake, Grant County.  
 (a) A person shall not possess shad or use shad as bait.  
 (b) Channel catfish size limit, twelve (12) inches.  
 (20) Cumberland Lake shall extend up:  
 (a) The Cumberland River to Cumberland Falls;  
 (b) The Big South Fork to Devils Jump;  
 (c) The Rockcastle River to The Narrows; and  
 (d) The Laurel River to Laurel River Dam:  
 1. Largemouth bass size limit, fifteen (15) inches.  
 2. Smallmouth bass size limit, eighteen (18) inches.  
 3. Striped bass size limit, twenty-two (22) inches; daily creel limit, two (2).  
 4. Crappie size limit, ten (10) inches.  
 (21) Cumberland River downstream from Barkley Lake Dam. Sauger size limit, fourteen (14) inches.  
 (22) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries, except for a portion of Hatchery Creek in Russell County as established in subsection (38) of this section.  
 (a) Brown trout size limit, twenty (20) inches; daily creel limit one (1) ~~with no culling~~.  
 (b) Brook trout size limit, fifteen (15) inches; daily creel limit one (1) ~~with no culling~~.  
 (c) Rainbow trout. There shall be a slot limit between fifteen (15) and twenty (20) inches; daily creel limit ~~with no culling~~ five (5), which shall not include more than one (1) fish greater than twenty (20) inches.  
 (d) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.  
 (e) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.  
 (23) Dale Hollow Lake.  
 (a) Smallmouth bass. There shall be a slot limit between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.  
 (b) Walleye and any walleye hybrid daily creel limit, five (5); size limit, sixteen (16) inches.  
 (c) Sauger daily creel limit, ten (10); size limit, fourteen (14) inches.  
 (d) Rainbow trout and brown trout, no size limit; daily creel limit, seven (7), singly or in combination.  
 (e) Largemouth bass size limit, fifteen (15) inches.  
 (f) Black bass aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.  
 (g) Crappie size limit, ten (10) inches; daily creel limit, fifteen (15).  
 (24) Dewey Lake.  
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
 (b) Blue and channel catfish aggregate creel limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.  
 (25) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall only fish with artificial bait.  
 (26) Doe Run Lake, Kenton County.  
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).  
 (b) Channel catfish daily creel limit, four (4).  
 (c) A person shall not possess shad or use shad as bait.  
 (27) Dog Fork, Wolfe County. A person shall:  
 (a) only fish with an artificial bait with a single hook; and  
 (b) ~~Release brook trout~~.  
 (28) Elkhorn Creek downstream from the confluence of the North and South forks to the first shoal located 3,400 feet above its confluence with the Kentucky River, as posted with signs. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.  
 (29) Elmer Davis Lake, Owen County.  
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.  
 (b) Channel catfish size limit, twelve (12) inches.  
 (c) A person shall not possess shad or use shad as bait.  
 (30) Fishtrap Lake.  
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
 (b) Crappie size limit, nine (9) inches.  
 (c) Blue and channel catfish aggregate daily limit of fifteen (15), only one (1) of which shall be longer than twenty-five (25) inches.  
 (31) Floyd's Fork Creek, from Highway 60 downstream to Bardstown Road in Jefferson County. Largemouth and smallmouth bass size limit, fifteen (15) inches; daily creel limit, one (1).  
 (32) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish, daily limit, five (5); size limit, fifteen (15) inches.  
 (33) General Butler State Park Lake, Carroll County.  
 (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).  
 (b) Channel catfish daily creel limit, four (4).  
 (c) A person shall not possess shad or use shad as bait.  
 (34) Grayson Lake. Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
 (35) Greenbo Lake, Greenup County.  
 (a) A person shall not possess shad or use shad as bait.  
 (b) Bluegill and sunfish daily and possession limit, fifteen (15) fish.  
 (36) Green River Lake.  
 (a) Crappie size limit, nine (9) inches.  
 (b) Muskellunge size limit, thirty-six (36) inches.  
 (37) Guist Creek Lake, Shelby County. Channel catfish size limit twelve (12) inches.  
 (38) Hatchery Creek, Russell County.  
 (a) A person fishing for trout in the upper rip-rap area of the creek shall follow the size and creel limits for trout for the Cumberland River below Wolf Creek Dam established in subsection (22) of this section.  
 (b) A person fishing for trout in the lower portion of the creek, as denoted by signs shall:  
 1. Only use artificial bait; and  
 2. Release all trout.  
 (39) Jerrico Lake, Henry County.  
 (a) Largemouth bass size limit, fifteen (15) inches.  
 (b) A person shall not possess shad or use shad as bait.  
 (40) ~~(39)~~ Kentucky Lake and the canal connecting Kentucky and Barkley lakes.  
 (a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.  
 (b) Crappie size limit, ten (10) inches; daily limit, twenty (20).  
 (c) Sauger size limit, fourteen (14) inches.  
 (41) ~~(40)~~ Kincaid Lake, Pendleton County. Channel catfish size limit, twelve (12) inches.  
 (42) ~~(41)~~ Lake Blythe, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.  
 (43) ~~(42)~~ Lake Malone, Muhlenburg and Logan County.  
 (a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.  
 (b) Channel catfish size limit, twelve (12) inches.  
 (44) ~~(43)~~ Lake Mingo, Jessamine County. A person shall not

possess shad or use shad as bait.

~~(45)~~~~[(44)]~~ Lake Pollywog, Grant County. A person shall not possess shad or use shad as bait.

~~(46)~~~~[(45)]~~ Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches; daily creel limit three (3).

(b) Channel and blue catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

~~(47)~~~~[(46)]~~ Lake Shelby, Shelby County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

~~(48)~~~~[(47)]~~ Laurel River Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15).

~~(49)~~~~[(48)]~~ Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

~~(50)~~~~[(49)]~~ Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily limit, four (4).

~~(51)~~~~[(50)]~~ Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish daily creel limit, four (4).

(d) A person shall not possess shad or use shad as bait.

~~(52)~~~~[(51)]~~ Marion County Lake.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad as bait.

~~(53)~~~~[(52)]~~ McNeely Lake, Jefferson County.

(a) Channel and blue catfish size limit, twelve (12) inches.

(b) A person shall not possess shad or use shad as bait.

~~(54)~~~~[(53)]~~ Mill Creek Lake, Powell County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad as bait.

~~(55)~~~~[(54)]~~ New Haven Optimist Lake, Nelson County.

(a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish daily creel limit, four (4).

(c) A person shall not possess shad or use shad as bait.

~~(56)~~~~[(55)]~~ Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie size limit, nine (9) inches.

~~(57)~~~~[(56)]~~ Ohio River.

(a) Walleye, sauger, and any hybrid thereof, no size limit; daily creel limit, ten (10), singly or in combination.

(b) White bass, striped bass, and any hybrid thereof, daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(c) The blue catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

(d) The channel catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be twenty-eight (28) inches or longer.

(e) The flathead catfish daily creel limit shall be unlimited, except that no more than one (1) fish in the daily creel limit shall be thirty-five (35) inches or longer.

~~(58)~~~~[(57)]~~ Otter Creek, Meade County.

(a) Smallmouth and largemouth bass. There shall be a slot limit between twelve (12) and sixteen (16) inches.

(b) Daily limit shall not include more than one (1) smallmouth

or largemouth bass over sixteen (16) inches.

~~(59)~~~~[(58)]~~ Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

~~(60)~~~~[(59)]~~ Paintsville Lake.

(a) Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass size limit, eighteen (18) inches.

~~(61)~~~~[(60)]~~ Parched Corn Creek, Wolfe County. A person shall:

~~(a) only fish with an artificial bait with a single hook; and~~

~~(b) Release brook trout.~~

~~(62)~~~~[(61)]~~ Pennyryle Lake, Christian County. Largemouth bass. There shall be a slot limit between twelve (12) and fifteen (15) inches.

~~(63)~~~~[(62)]~~ Pikeville City Lake, Pike County. A person shall release largemouth bass.

~~(64)~~~~[(63)]~~ Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

~~(a) only fish with an artificial bait with a single hook; and~~

~~(b) Release brook trout.~~

~~(65)~~~~[(64)]~~ Reformatory Lake, Oldham County. Channel and blue catfish size limit, twelve (12) inches.

~~(66)~~~~[(65)]~~ Rough River Lake.

(a) Crappie size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

~~(67)~~~~[(66)]~~ Shanty Hollow Lake, Warren County.

(a) Largemouth bass size limit, fifteen (15) inches.

(b) Channel catfish size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad as bait.

~~(68)~~~~[(67)]~~ Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

~~(a) only fish with an artificial bait with a single hook; and~~

~~(b) Release brook trout.~~

~~(69)~~~~[(68)]~~ Sportsman's Lakes, Franklin County. A person shall not possess or use shad as bait.

~~(70)~~~~[(69)]~~ Spurlington Lake, Taylor County. A person shall not possess shad or use shad as bait.

~~(71)~~~~[(70)]~~ Sympson Lake, Nelson County. Largemouth bass size limit, fifteen (15) inches.

~~(72)~~~~[(71)]~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Blue and channel catfish:

1. Aggregate daily creel limit of fifteen (15); and

2. Only one (1) fish of either species in the aggregate daily creel limit shall be longer than twenty-five (25) inches.

(c) Crappie size limit, nine (9) inches; daily creel limit, fifteen (15).

~~(73)~~~~[(72)]~~ Tennessee River downstream from Kentucky Lake Dam. Sauger size limit, fourteen (14) inches.

~~(74)~~~~[(73)]~~ Trammel Creek, Allen County. Brown trout size limit, sixteen (16) inches; daily creel limit, one (1).

~~(75)~~~~[(74)]~~ Wood Creek Lake. Largemouth and smallmouth bass size limit, fifteen (15) inches.

~~(76)~~~~[(75)]~~ Yatesville Lake: Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

Section 4. Seasonal Catch and Release for Trout. (1) There shall be a catch and release trout season from October 1 through March 31 for the bodies of water listed in subsection 3 of this section.

(2) A person shall:

(a) Only use artificial bait; and

(b) Release all trout.

(3) The streams established in paragraphs (a) through (n) of this subsection shall be open for the catch and release trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

- (c) Big Bone Creek within Big Bone Lick State Park in Boone County;
- (d) Cane Creek in Laurel County;
- (e) Casey Creek in Trigg County;
- (f) Clear Creek from mouth upstream to 190 Bridge in Bell County;
- (g) East Fork of Indian Creek in Menifee County;
- (h) Elk Spring Creek in Wayne County;
- (i) Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road;
- (j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;
- (k) Middle Fork of Red River in Natural Bridge State Park in Powell County;
- (l) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park;
- (m) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County; and
- (n) Trammel Creek in Allen County.
- (4) There shall be a seasonal catch and release trout season for Swift Camp Creek in Wolf County from October 1 through May 31.

Section 5. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

- (a) Size limits for selected species;
- (b) Daily creel limits for selected species;
- (c) Eligible participants; and
- (d) Dates and times of special limits.

(2) An event sponsor shall post signs informing anglers of any special limits for a minimum of twenty-four (24) hours before the event.

Section 6. Creel and Size Limits for Special Lakes and Ponds. (1) The requirements established in paragraphs (a) through (d) of this subsection shall apply to all bodies of water listed in subsection (2) of this section:

- (a) Largemouth bass size limit, fifteen (15) inches; daily creel limit, one (1);
- (b) Channel catfish daily creel limit, four (4);
- (c) Sunfish or bream daily creel limit, fifteen (15); and
- (d) Rainbow trout daily creel limit, five (5).
- (2) Special lakes and ponds:
  - (a) Alexandria Community Park Lake, Campbell County;
  - (b) Anderson County Community Park Lake, Anderson County;
  - (c) Bloomfield Park Lake, Nelson County;
  - (d) Bob Noble Park Lake, Nelson County;
  - (e) Brickyard Pond, Knox County;
  - (f) Camp Ernst, Boone County;
  - (g) Carlson Lake, Meade County in Fort Knox;
  - (h) Cherokee Park Lake, Jefferson County;
  - (i) Dickerson Lake, Meade County in Fort Knox;
  - (j) Easy Walker Park Pond, Montgomery County;
  - (k) Fisherman's Park lakes, Jefferson County;
  - (l) Kingdom Come State Park Lake, Harlan County;
  - (m) Jacobsen Park Lake, Fayette County;
  - (n) James D. Beville Park Lake, Grayson County;
  - (o) Lake Mingo, Jessamine County;
  - (p) Lake Pollywog, Grant County;
  - (q) Lower Sportsman's Lake, Franklin County;
  - (r) Lusby Lake, Scott County;
  - (s) Madisonville City Park lakes, Hopkins County;
  - (t) Martin County Lake, Martin County;
  - (u) Maysville-Mason County Recreation Park Lake, Mason County;

- (v) Middleton Mills Long Pond, Kenton County;
- (w) Middleton Mills Shelterhouse Pond, Kenton County;
- (x) Mike Miller Park Lake, Marshall County;
- (y) Miles Park lakes, Jefferson County;
- (z) Millennium Park Pond, Boyle County;
- (aa) Panther Creek Park Lake, Daviess County;
- (bb) Prisoners Lake, Kenton County;

- (cc) Scott County Park Lake, Scott County;
- (dd) Southgate Lake, Campbell County;
- (ee) Three Springs Lake, Warren County;
- (ff) Tom Wallace Park Lake, Jefferson County;
- (gg) Upper Sportsman's Lake, Franklin County;
- (hh) Watterson Park Lake, Jefferson County;
- (ii) Waverly Park Lake, Jefferson County;
- (jj) Waymond Morris Park Lake, Daviess County;
- (kk) Whitehall Park Lake, Madison County; and
- (ll) Yellow Creek Park Lake, Daviess County.

MATT SAWYERS, Acting Commissioner

LINDY CASEBIER, Deputy Secretary

For ROBERT H. STEWART, Secretary

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 24, 2014, at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-9136, email fwpubliccomments@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate creel limits and methods of take, and to make these requirements apply to a limited area. KRS 150.470 authorizes the department to establish creel and size limits for fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at high levels.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will implement a statewide "no cull" regulation on trout. Currently, culling of trout is prohibited only in the Lake Cumberland tailwater below Wolf Creek Dam. Regulations on alligator gar will change from unlimited harvest to no harvest. Trout in a portion of Hatchery Creek in Russell County will change from size and creel limits found in the Lake Cumberland tailwater to a no harvest and artificial bait only regulation. Size and creel limits on flathead and blue catfish in the



Ohio River will be changed from no size or creel limit to a 1 fish  $\geq 35$  inches creel limit for each species; numbers allowed under the 35 inch size limit will be unlimited for each species. Size limits on channel catfish in the Ohio River will change from no creel or size limit to a 1 fish  $\geq 28$  inches; numbers allowed under the 28 inch size limit will be unlimited. In a section of Floyd's Fork Creek in Jefferson County from Highway 60 downstream to Bardstown Road, a seasonal catch and release period will be implemented; all trout caught between October 1 and March 31 must immediately be released and only artificial baits shall be used. One lake was added to the special lakes and ponds section (Fishing in the Neighborhoods program).

(b) The necessity of the amendment to this administrative regulation: A no cull regulation was implemented statewide on trout to eliminate the mortality associated with the releasing of trout that were previously being held as part of the daily creel limit. A no harvest regulation was placed on alligator gar to allow this long lived species to reach maturity to allow for the best chance to restore this species in Kentucky. The no harvest and artificial bait only regulation for trout in a portion of Hatchery Creek was implemented to allow adult fish in that portion of the stream to spawn and to create a high quality fishery. Size and creel limits on the three species of catfish in the Ohio River are needed to prevent overharvest of trophy sized fish. A seasonal catch and release period was implemented at Floyd's Fork Creek to increase the quality of the trout fishery in the stream. One lake (Maysville-Mason County Recreation Park Lake) was added to the special lakes and ponds section to increase the fishing opportunity in Mason County.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The following individuals will be affected by this amendment: All individuals who fish for trout; those who fish for trout in Floyd's Fork Creek; those who fish for trout in Hatchery Creek; those who fish for catfish in the Ohio River; and those who choose to fish in Maysville-Mason County Recreation Park Lake.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers will need to comply with the changes identified in 2(a).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost incurred by the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anglers who fish for trout statewide, at Floyds Fork Creek, at Hatchery Creek, for catfish in the Ohio River, and in the additional special lake will all benefit in the long run from higher quality sport fisheries.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding source for this program is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky are treated equally with these amendments.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will not generate direct revenue. It is unknown if this administrative regulation could indirectly increase any fishing license sales during the first year, but it is doubtful.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no direct revenue generated in subsequent years, and it is doubtful if fishing license sales will be indirectly increased because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no initial cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

##### 501 KAR 6:110. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, May 15, 2014[July 26, 2013], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

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RCC 01-08-01 Public Information and News Media Access (Amended 05/15/12)

RCC 02-02-02 Inmate Personal Funds (Amended 05/15/12)

RCC 02-02-05 Inmate Canteen Services (Amended 05/15/12)

RCC 05-02-01 Consultants, Research, and Student Interns (Added 5/15/12)

RCC 06-03-01 Records Release of Information (Amended 05/15/12)

RCC 08-01-01 Fire Prevention (Amended 7/26/13)

RCC 09-08-01 Operation of a Licensed Vehicle by an Inmate (Added 05/15/12)

RCC 09-10-01 Fishing At Roederer Correctional Complex Lakes (Amended 05/15/14[7/26/13])

RCC 09-29-01 Tobacco Free Environment (Added 05/15/12)

RCC 10-01-02 Temporary Holding Cell Guidelines (Amended 05/15/14[7/26/13])

RCC 11-01-01 Food Service Guidelines (Amended 05/15/12)

RCC 11-04-01 Food Service: Meals, Storage, Menu Nutrition and Alternative Items (Amended 5/15/14[05/15/12])

RCC 11-05-02 Sanitation and Health Requirements of Food Handlers (Amended 05/15/12)

RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuance (Amended 05/15/12)

RCC 12-01-02 Bed Areas (Amended 05/15/14[05/15/12])

RCC 12-01-03 General Guidelines for Living Units (Amended 05/15/14[05/15/12])

RCC 12-02-01 Laundry Services (Amended 05/15/14[05/15/12])

RCC 12-03-01 Personal Hygiene Items: Issuance and Replacement Schedule (Amended 05/15/12)

RCC 12-03-02 Barber Shop Services and Equipment Control (Amended 05/15/14[05/15/12])

RCC 12-07-01 Treatment of Inmates with Body Lice (Added 05/15/12)

RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 05/15/14[05/15/12])

RCC 13-03-01 Dental Procedures and Sick Call (Amended 05/15/14[05/15/12])

RCC 13-04-01 Preliminary Health Evaluation and Establishment of Inmate Medical Records (Amended 05/15/12)

RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 05/15/14[7/26/13])

RCC 13-07-03 Use of Pharmaceutical Products (Amended 05/15/14[05/15/12])

RCC 13-07-04 Self-Administered Medication Program (Amended 7/26/13)

RCC 13-09-01 Notification of an Inmate's Family Due to Serious Illness, Surgery, or Death (Amended 05/15/12)

RCC 13-10-01 Health Education and Special Health Programs (Amended 05/15/12)

RCC 13-11-01 Informed Consent (Amended 05/15/12)

RCC 13-13-01 Identification and Transfer Guidelines for Inmates with Psychological, Psychiatric or Severe Medical Disabilities (Amended 05/15/14[05/15/12])

RCC 13-16-01 Specialized Health Services (Amended 05/15/14[05/15/12])

RCC 13-18-01 Infection Control (Amended 05/15/12)

RCC 13-19-01 Medical Waste Management (Amended 05/15/12)

RCC 13-20-01 Medical Services Co-pay (Amended 05/15/12)

RCC 13-21-01 Mental Health Services (Amended 05/15/12)

RCC 13-24-01 Substance Abuse and Chemical Dependency Program (Amended 05/15/12)

RCC 14-01-01 Inmate Rights and Responsibilities (Amended 05/15/12)

RCC 14-02-01 Legal Services Program (Amended 05/15/12)

RCC 14-03-01 Marriage of Inmates (Amended 05/15/12)

RCC 16-01-01 Inmate Visiting (Amended 05/15/14[7/26/13])

RCC 16-01-02 Restricted Visitation (Added 7/26/13)

RCC 16-02-01 Telephone Communications (Amended 05/15/12)

RCC 16-03-01 Mail Regulations (Amended 7/26/13)

RCC 16-04-01 Parole Hearings: Media and Visitors (Added 7/26/13)

RCC 17-01-01 Assessment and Orientation Procedure for Intra-system Transfers (Amended 05/15/12)

RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 05/15/14[7/26/13])

RCC 17-05-05 Assessment Center Operations and Reception Program (Amended 05/15/14[05/15/12])

RCC 18-01-01 Classification (Amended 05/15/14[05/15/12])

RCC 19-01-01 Job and Program Assignments (Amended 05/15/14[7/26/13])

RCC 20-01-01 Education Program (Amended 05/15/14[05/15/12])

RCC 20-01-03 Vocational Horticulture Program (Amended 05/15/14[05/15/12])

RCC 21-01-01 Library Services (Amended 05/15/14[7/26/13])

RCC 22-01-01 Recreation and Inmate Activities (Amended 05/15/12)

RCC 22-03-01 Inmate Clubs and Organizations (Amended 7/26/13)

RCC 22-03-02 Alcohol Anonymous and Narcotics Anonymous Club Sponsored Picture Project (Amended 7/26/13)

RCC 22-04-01 Arts and Crafts Program (Amended 05/15/14[7/26/13])

RCC 23-01-01 Religious Services (Amended 05/15/14[05/15/12])

RCC 24-01-01 Social Services and Counseling (Amended 05/15/14[05/15/12])

RCC 25-01-01 Furloughs (Amended 05/15/12)

RCC 25-05-01 Inmate Discharge Procedure (Amended 05/15/14[05/15/12])

RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 7/26/13)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LADONNA H. THOMPSON, Commissioner

APPROVED BY AGENCY: May 12, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2014 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amber Arnett, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amber Arnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Roederer Correctional Complex including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and to meet ACA

requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Roederer Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to employees and the inmate population concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment brings the Roederer Correctional Complex into compliance with ACA Standards and updates current practices for the institution.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes:

It permits the Commissioner or her authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Roederer Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 254 employees and 1,152 inmates at the Roederer Correctional Complex and all volunteers and visitors to the institution.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with any operational changes made by this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An increase in cost is not anticipated to the entities from the changes in operations made in the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the penal institution.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Roederer Correctional Complex budgeted funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The regulation does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Roederer Correctional Complex in LaGrange, Kentucky

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky Revised Statutes – 196.035, 197.020

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no additional expenditures/revenues as this regulation includes revisions of the operations that are already in place.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated from this amended regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no new revenue generated from this amended regulation.

(c) How much will it cost to administer this program for the first year? Please see below.

(d) How much will it cost to administer this program for subsequent years? Please see below.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation includes general guidelines to operate a state prison in LaGrange, Kentucky. There is no new revenue generated in this regulation and no additional expenditures to continue the programs. Expenditures are budgeted from the State of Kentucky for the operation of the Roederer Correctional Complex.

## JUSTICE AND PUBLIC SAFETY CABINET

### Department of Juvenile Justice

#### (Amendment)

#### 505 KAR 1:110. Department of Juvenile Justice Policies and Procedures[Manual]: Program Services.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 635.500, 635.505(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policies[Policy] and Procedures[Manual]: Program Services", May 14, 2014[November 15, 2005], is incorporated by reference and includes the following:

300 Definitions[Programs—and—Services] (Amended 05/14/14[7/15/05]);

300.1 Programs and Services[Communication—and—Correspondence] (Amended 05/14/14[7/15/05]);

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300.2 Correspondence to the Court System (Added 05/14/14);  
 301 Intake[Reception] and Orientation (Amended 05/14/14[11/15/05]);  
 301.1 Youth's Personal Property,[Belongings and] Dress Code, and Facility Issued Property (Amended 05/14/14[7/15/05]);  
 301.2 Hair and Grooming (Added 05/14/14);  
 302 Individual Treatment Plan and Aftercare Plan[Individualized Treatment/Aftercare Planning] (Amended 05/14/14[11/15/05]);  
 303 Treatment Team Composition, Function,[Functioning] and Responsibility (Amended 05/14/14[7/15/05]);  
 306 Phase System (Amended 05/14/14[7/15/05]);  
 307 Counseling Services (Amended 05/14/14[11/15/05]);  
 308 Advanced Care Unit (Added 05/14/14);  
 309 Family Engagement[Involvement in Treatment Process] (Amended 05/14/14[7/15/05]);  
 310 Family and Community Contacts: Mail, Telephone, and Visitation[, Off-Grounds Activities, Day Release and Furlough] (Amended 05/14/14[7/15/05]);  
 314 Youth Council (Amended 05/14/14[7/15/05]);  
 315 Use of Non-Governmental[Nongovernmental] Funds and Youth Activity Funds (Amended 05/14/14[7/15/05]);  
 316 Youth Work Programs (Amended 05/14/14[7/15/05]);  
 317 Recreation (Amended 05/14/14[7/15/05]);  
 318 Behavior Management (Amended 05/14/14[7/15/05]);  
 318.1 Discipline (Amended 05/14/14[7/15/05]);  
 318.2 Disciplinary Review (Amended 05/14/14[11/15/05]);  
 318.3 Discipline: Level V Youth Development Center[5 Facilities] (Amended 05/14/14[7/15/05]);  
 319 Staff Requirements for the[Required Staffing for] Supervision of Youth (Amended 05/14/14[7/15/05]);  
 319.1 Facility Capacities[and Staffing Requirements] (Amended 05/14/14[7/15/05]);  
 320 Transportation of Youth (Amended 05/14/14[7/15/05]);  
 321 [Critical] Incident Reporting[Reports] (Amended 05/14/14[7/15/05]);  
 322 Drug Screening and Testing ([Added and] Amended 05/14/14[11/15/05]);  
 323 Isolation (Amended 05/14/14[11/15/05]);  
 324 [Mechanical] Restraints (Amended 05/14/14[11/15/05]);  
 325 Searches (Added 05/14/14);[325.1 Searches (Amended 7/15/05)]  
 326 Contraband, Seizure, and Chain of Custody[Evidence] ([Added and] Amended 05/14/14[7/15/05]);  
 327 Escape and Absent Without Leave[AWOL] (Amended 05/14/14[7/15/05]);  
 328 Individual Client Records[Record] (Amended 05/14/14[7/15/05]);  
 329 Progress Notes[Notation] (Amended 05/14/14[7/15/05]);  
 330 Log and Shift Reports (Amended 05/14/14[7/15/05]);  
 331 Grievance Procedure (Amended 05/14/14[7/15/05]);  
 332 Authorized Leave: Off-grounds Activities, Day Releases, and Furloughs (Added 05/14/14);  
 333 Day Treatment Admissions (Added 05/14/14);  
 334 Youth Development Center[YDC] Educational and Vocational Programming, Assessment, and Transition (Amended 05/14/14[7/15/05]);  
 334.1 Day Treatments[Treatment]: Educational Programming, Assessment, and Transition (Amended 05/14/14[7/15/05]);  
 334.2 Group Homes: Educational Services (Amended 05/14/14[7/15/05]);  
 335 Youth Development Center[YDC] Educational and Vocational Records; Day Treatment Educational Records (Amended 05/14/14[7/15/05]);[335.1 Day Treatment: Education; Records (Amended 7/15/05)]  
 339 Youth Development Center and Day Treatment[YDC] Instructional Staffing (Amended 05/14/14[7/15/05]);

341 Youth Development Center and Day Treatment Evaluation of Integrated Educational and Vocational Plan (Added 05/14/14); [339.1 Day Treatment: Instructional Staffing (Amended 7/15/05)]  
 342 YDC Evaluation of Integrated Educational/Vocational Plan (Amended 7/15/05)  
 342.1 Day Treatment: Evaluation of Educational Programming (Amended 7/15/05)]  
 343 Technical[YDC Vocational] Education Safety (Amended 05/14/14[7/15/05]);  
 344 Library Services (Amended 05/14/14[7/15/05]);  
 345 Religious Programs (Amended 05/14/14[7/15/05]);  
 346.1 Youthful Offenders (Added 05/14/14);  
 347.1 Educational and Meritorious Good Time (Added 05/14/14);[346 Educational Good Time (Amended 7/15/05)]  
 347 Meritorious Good Time (Amended 7/15/05)  
 348 Sex Offender Treatment (Amended 7/15/05)]  
 351 Youthful Offender Parole (Amended 05/14/14[7/15/05]); and  
 352 Youthful Offender Transfer (Amended 05/14/14[7/15/05]);[353 Extended Jurisdiction for Youthful Offenders (Amended 7/15/05)]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

BOB D. HAYTER, Acting Commissioner

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 14, 2014 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 24, 2014 at 11:00 a.m., at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by, Tuesday, June 17, 2014 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. A transcript of this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax, (502) 573-0836.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of the Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees, treatment providers and the residential and community population, and brings the Department into compliance with the American Correctional Association 4th Edition Standards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and bring the Department into compliance with the American Correctional Association 4th Edition Standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of program services within residential and day treatment programs in the Department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing

clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will bring the Department of Juvenile Justice into compliance with the American Correctional Association 4th Edition Standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067, and to bring the Department into compliance with the American Correctional Association 4th Edition Standards.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the Commissioner or authorized representative to implement practices and procedures to ensure the safe and efficient operation of Department residential and day treatment programs.

(d) How the amendment will assist in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the residential and community population as to their duties, rights, privileges and responsibilities. The amendment will also bring the Department of Juvenile Justice into compliance with the American Correctional Association 4th Edition Standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1,335 employees of residential programs, 353 youth in DJJ residential programs, and all visitors and volunteers to DJJ facilities.

(4) Provide analysis of how the entities identified in question (3) will be impacted by the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: To ensure a clearer understanding of the policies and procedures by staff and residents, thereby impacting the security and safety of the agency and the public.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: DJJ residential programs will need to update their facility Standard Operating Procedures to comply with this amendment, and will require the Advanced Care Unit to maintain a higher staff to youth ratio.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each program will absorb the cost of updating procedures and training staff on updated policies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department will come into compliance with the American Correctional Association 4th Edition Standards.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required, however any associated training or staff allocations will come from the Department of Juvenile Justice General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) Tiering: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of

the Kentucky Constitution.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 15A.065(1), 15A.067, 600.040, 605.110(3), 605.150, 635.095, 635.100(8), 635.50, 635.520, 640.120, 645.250

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Response: None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Response: None

(c) How much will it cost to administer this program for the first year? Response: There are no additional costs to "administer" the programs.

(d) How much will it cost to administer this program for subsequent years? Response: None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and Training (Amendment)

### 803 KAR 2:300. General.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.3-1910.7, 1910.9  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. This administrative regulation establishes the general standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

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(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7 and 1910.9, revised July 1, 2013; and

(2) The revisions to 29 C.F.R. 1910.6 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215[2012]; and (2) The revisions to 29 C.F.R. 1910.6 as published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.6 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned direct final rule 803 KAR 2:300 must be amended to include the adopted changes. With the June 13, 2013 direct final rule OSHA is updating its references to national consensus standards for signage. OSHA's rule will update references to the American National Standards Institute (ANSI) standards within the rules for accident prevention signs and tags throughout the regulations. The direct final rule amendments specific to this KAR updates references to signage requirements that are incorporated within the regulations. Additionally, mistakes made when incorporating previous signage consensus standards were corrected in this Federal Register. The final rule also corrects information provided to the public relaying where the documents may be purchased. Finally, this amendment updates this administrative regulation to

meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.6 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment changes references to consensus standards incorporated by reference within OSHA's standards. No additional compliance duties are expected from the revisions to 1910.6.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84

STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rule updating references to a national consensus standard.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and

##### Training

##### (Amendment)

#### 803 KAR 2:306. Occupational health and environmental controls.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.6, 1910.94-1910.98

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338.~~[29 C.F.R. 1910.94-1910.98 establishes federal requirements relating to occupational noise exposure.]~~ This administrative regulation establishes the occupational health and environmental control standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation and the requirements established in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and the Records Services, General Services Administration:

(1) 29 C.F.R. 1910.94-1910.98 and Appendices, revised July

1, 2013; and

(2) The amendment to 29 C.F.R. 1910.97 published in the June 13, 2013 Federal Register, Volume 78, Number 114 and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215[2009; and

(2) The amendment to 29 C.F.R. 1910.94 published in the September 9, 2009, Federal Register, Volume 74, Number 173].

Section 3. Occupational Noise Exposure. (1) (a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(1).

(b) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz shall be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests shall include 8,000 Hz.

(2)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(4).

(b) Audiometric examinations shall be administered in a room meeting the requirements listed in 29 C.F.R. 1910.95, Appendix D: Audiometric Test Rooms. If an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(3)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(ii).

(b) Audiometer calibration shall be checked acoustically at least annually in accordance with subsection (7)(b) of this section: Acoustic Calibration of Audiometers.

1. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this check.

2. Deviations of fifteen (15) decibels or greater shall require an exhaustive calibration.

(4)(a) The language relating to audiometric test requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(h)(5)(iii).

(b) An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz may be omitted from this calibration.

(5)(a) The language relating to access to information and training materials requirements for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(l)(1).

(b) The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(6)(a) The language relating to exemptions to the administrative regulation for occupational noise exposure requirements in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95(o).

(b) 29 C.F.R. 1910.95(c) through (n) and subsections (1) through (5) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(7)(a) The language relating to acoustical calibration of audiometers for occupational noise exposure in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.95, Appendix E.

(b) Acoustic Calibration of Audiometers.

1. Subparagraphs 2 through 5 of this paragraph shall be mandatory.

2. Audiometer calibration shall be checked acoustically, at least annually, according to the procedures established in subparagraphs 2 through 5 of this paragraph.

a. The equipment necessary to perform these measurements shall be a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler.

b. In making these measurements, the accuracy of the

calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

3. Sound pressure output check.

a. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2 of this administrative regulation, as appropriate for the type of earphone, in the column entitled "sound level meter reading".

4. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter shall indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

5.a. Tolerances. If any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 of this administrative regulation plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, the employer shall consider conducting an exhaustive calibration.

b. The employer shall conduct an exhaustive calibration if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	77.0
2000	9.07	79.0
3000	10.0	80.0
4000	9.57	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.



A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendment to 29 C.F.R. 1910.97 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The Kentucky OSH Standards Board adopted the amendment on May 6, 2014. As a result of the adoption of the direct final rule 803 KAR 2:306 must be amended to include the adopted changes. With the June 13, 2013 direct final rule OSHA is updating its references to national consensus standards for signage. OSHA's rule will update references to the American National Standards Institute (ANSI) standards within the rules for accident prevention signs and tags throughout the regulations. The direct final rule amendments specific to this KAR updates references to signage requirements that are incorporated within the non-ionizing radiation regulation permitting the employer to follow the old or the new consensus standard. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.97 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards permitting the employer to comply with either the old or updated reference to the national consensus standard. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R.

Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment updates references to consensus standards incorporated by reference within OSHA's standards. No additional compliance duties are expected from the revisions to 1910.97.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any

additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation carries requirements which are stricter than those required by OSHA. This administrative regulation requires that audiometric tests and equipment include the 8,000 Hz. frequency, which the federal regulation does not. This provision has been in place since December 15, 1989. This current amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The provision in Section 3 of this administrative regulation which requires that audiometric tests and equipment include the 8,000 Hz. frequency has been in place since December 15, 1989. The purpose for the inclusion of the 8,000 Hz. frequency is to comply with the International Standards Organization (ISO) standard 6189-1983, "Acoustics -- Pure tone air conduction threshold audiometry for hearing conservation purposes." This current amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rule updating references to a national consensus standard.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

#### 803 KAR 2:308. Personal protective equipment.

RELATES TO: 29 C.F.R. 1910.132-1910.138

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. 29 C.F.R. 1910.132 to 1910.138 and Appendices establish the federal requirements relating to personal protective equipment. This administrative regulation establishes personal protective equipment standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Established federal standard" is defined in KRS 338.015(10).

(5) "National consensus standard" is defined in KRS 338.015(9).

(6) "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.138, and Appendices, revised July 1, 2013; and

(2) The amendments to 29 C.F.R. 1910 Subpart I as published in the April 11, 2014, Federal Register, Volume 79, Number 70[2014]; (2) The amendments to 29 C.F.R. 1910.134 as published in the August 7, 2012 Federal Register, Volume 77, Number 152; and (3) The amendments to 29 C.F.R. 1910.135 as published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222].

LARRY ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the

public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 1, 2013 and establishes the amendments to 29 C.F.R. 1910.136 and 137, Appendix B of Subpart I published in the April 11, 2014 Federal Register, Volume 79, Number 70. The amendments resulting from this final rule were adopted by the OSH Standards Board on May 06, 2014. As a result of the adoption of this final rule 803 KAR 2:308 must be amended to include the adopted changes. With the April 11, 2014 final rule, OSHA is amending the Electric Power Generation, Transmission, and Distribution standard in construction and general industry to make them more consistent. It is also amending the Electrical Protective Equipment standard in construction and general industry. The final rule amendments specific to 1910.136 requires employees to use protective footwear that protects the employee from electrical hazards if any electrical hazards remain after the employer takes other necessary protective measures. The final rule amendments specific to 1910.137 address design requirements of electrical PPE and include new requirements for equipment made of materials other than rubber. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:308, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Section 2 updates the C.F.R. to July 1, 2013 and establishes the amendments to Subpart I of 29 C.F.R. 1910 published in the April 11, 2014 Federal Register, Volume 79, Number 70. As a result of the adoption of this final rule 803 KAR 2:308 must be amended to include the adopted changes. The specific amendments to the Electrical Protective Equipment requirements in general industry will make them consistent with the new PPE standard in construction. The amendment to the foot protection standard will increase an employee's protection against electrical hazards. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative

regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:308, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The April 11, 2014 final rule requires changes to the foot protection and electrical protective equipment requirements. Changes to the design, manufacture, and care of electrical PPE in general industry will provide alternative and more effective means of protecting employees from electric shock than existing OSHA standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revisions, OSHA does not expect any costs associated with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. There will be no costs to implement these specific amendments.

(b) On a continuing basis: There will be no costs on a continuing basis to implement these amendments to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:308, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:308, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendments of these regulations

(d) How much will it cost to administer this program for subsequent years? There are no expected costs to implement these specific amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: These specific amendments to these

regulations are not expected to create any additional costs to the entities. No information was available specific to this state.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

**803 KAR 2:309. General environmental controls.**

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.141 -1910.147

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.141 to 1910.147 establishes the federal requirements relating to general environmental controls. This administrative regulation establishes the general environmental controls standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined in KRS 338.015(2).

(5) "Employer" is defined in KRS 338.015(1).

(6) "Established federal standard" is defined in KRS 338.015(10).

(7) "National consensus standard" is defined in KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" is defined in KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.141-1910.147, revised July 1, 2013; and

(2) The amendments to 29 C.F.R. 1910.145 published in the June 13, 2014 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215[2014]; and (2) The amendments to 29 C.F.R. 1910.146 published in the December 27, 2011, Federal Register, Volume 76, Number 248].

Section 3. (1)(a) Construction of Water Closets. The requirements relating to construction of water closets in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).

(b) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.

(2)(a) Lockout. The requirements relating to the utilization of lockout procedures in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(ii).

(b) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.

(3)(a) Full employee protection. The requirements relating to

tag location in subsection (b) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).

(b) When a tagout device is used on an energy isolating device which is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program. If tagout devices are used with energy isolating devices designed with the incapability of being locked, the tag attachment shall be fastened at the same point at which the lock would have been attached. ~~[As approved by the Kentucky Occupational Safety and Health Standards Board.]~~

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.145 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:309 must be amended to include the adopted changes. With the June 13, 2013 direct final rule OSHA is updating its references to national consensus standards for signage. OSHA's rule will update references to the American National Standards Institute (ANSI) standards within the rules for accident prevention signs and tags throughout the regulations. The direct final rule amendments specific to this KAR updates references to signage requirements that are incorporated within the regulations. This amendment keeps and allows employers to follow the older existing consensus signage standards or permits them to use the newer standard. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational

Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.145 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards to include the updated consensus standard. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment changes references to consensus standards incorporated by reference within OSHA's standards. No additional compliance duties are expected from the revisions to 1910.145.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a

continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, Section 3 of this administrative regulation imposes stricter requirement than those required by the federal mandate. This section places requirements on employers related to the construction of water closets and the utilization of lockout/tagout procedures. These requirements have been in effect since December 15, 1989. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3(1)(a) and (b) of this administrative regulation differs from the federal requirement only insofar as to require that water closets be equipped with a door. Section 3(2)(a) and (b) of this administrative regulation differ from the federal requirement such that if an energy isolating device is capable of being locked out, then the employer's energy control program shall utilize lockout, whereas the federal requirement allows the use of either the lockout or tagout method. Section 3(3)(a) and (b) of this administrative regulation differ from the federal requirement such that a tagout device may be used on an energy isolating device only if the device is incapable of being locked out, whereas the federal requirement allows the use of either the lockout or tagout method. These provisions provide for greater employee protections, and have been in place since December 15, 1989. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rule updating references to a national consensus standard.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes machinery and machine guarding standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "National consensus standard" is defined in KRS 338.015(9).

(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative

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regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.211 through 1910.219[1940.222], revised as of July 1, 2013; and

(2) The revisions to 29 C.F.R. 1910.217 as published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75[2012]; and (2) The revisions to 29 C.F.R. 1910.217, as published in the August 7, 2012 Federal Register, Volume 77, Number 152].

**Section 3. Reporting Requirement.** An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report the information to the Kentucky Labor Cabinet, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

**Section 4. Clutch/Brake Control.** (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).

(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position.

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013, removes reference and requirements related to 1910.220-222, which no longer exists, and establishes the amendment to 29 C.F.R. 1910.217 published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75. Section 3 of this regulation requires employers to report information to the Kentucky Labor Cabinet. Section 4 of this administrative regulation carries requirements that are stricter than those required by OSHA. This section clarifies that employers may use a reversing means with the clutch-brake control in the inch position. This provision has been in place since December 13, 1996. The Kentucky OSH Standards Board adopted the

amendments to the KAR on May 6, 2014. As a result of the adoption of the aforementioned direct final rule 803 KAR 2:314 must be amended to include the adopted changes. With the November 20, 2013 direct final rule OSHA is revising the mechanical power presses standard related to developing and maintaining certification records of periodic inspections performed on power presses and expressly requiring employers to perform maintenance, while removing a previous requirement to develop and maintain records of weekly inspections. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013, removes reference and requirements related to 1910.220-222, which no longer exists, and establishes the amendment to 29 C.F.R. 1910.217 published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75. With the November 20, 2013 direct final rule OSHA is revising the mechanical power presses standard related to developing and maintaining certification records of periodic inspections performed on power presses while removing a previous requirement to develop and maintain records of weekly inspections. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an

amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment revises the mechanical power presses standard related to developing and maintaining certification records of periodic inspections performed on power presses while removing a previous requirement to develop and maintain records of weekly inspections while keeping records of the maintenance that is required after the weekly inspection. No additional compliance duties are expected from the revisions to 1910.217.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? Sections 3 and 4 of this regulation impose stricter requirements for reporting injuries and power press clutch brake control. Both of these stricter requirements have been effective since December 13, 1996. The amendment to this regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Sections 3 and 4 of this regulation impose stricter requirements for reporting injuries and power press clutch brake control. Both of these stricter requirements have been effective since December 13, 1996. The amendment to this regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. The current amendment to the regulation does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rule's inspection and maintenance of records requirements related to mechanical power presses.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training  
(Amendment)

#### 803 KAR 2:317. Special industries.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.261-1910.272

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS



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338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.261 to 1910.272 establish the federal requirements relating to special industries. This administrative regulation establishes the special industries standards to be enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.261-1910.272, revised July 1, 2013;

(2) The amendment to 29 C.F.R. 1910.261 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215; and

(3) The amendments to 29 C.F.R. 1910.269 and Appendices as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014]; and (2) The amendments to 29 C.F.R. 1910, Subpart R—Special Industries, as published in the December 27, 2011 Federal Register, Volume 76, Number 248].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.261 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. Section 2 also establishes the amendments to 1910.269 as published in the April 11, 2014 Federal Register, Volume 79, Number 70. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the

forementioned final rules 803 KAR 2:317 must be amended to include the adopted changes. In the April 11, 2014 final rule, OSHA is amending the general industry standards for Electric Power Generation, Transmission, and Distribution to make them more consistent with the construction standard. These amendments cover the operation and maintenance of electric power generation, control, transformation, transmission, and distribution lines and equipment. With the June 13, 2013 final rule OSHA is amending references to signage consensus standards to incorporate the most current version of the consensus standards. This revision will allow those required to have signage to follow the "old" version that is currently being enforced or the newest version that is being added to the regulation. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:317, related to both final rules were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1910.261 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation updates references to consensus standards incorporated by reference within OSHA standards. Section 2 also establishes the amendments to 1910.269 published in the April 11, 2014 Federal Register, Volume 79, Number 70. The amendments related to this final rule revise the requirements of the Electric Power Generation, Transmission, and Distribution standard in general industry to align with the construction industry requirements. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:317, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the

authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The June 13, 2013 direct final rule does not require any additional compliance requirements by the employer. The April 11, 2014 final rule related to the requirements of the Electric Power Generation, Transmission, and Distribution standard in general industry will require employers to adjust to new rules. These include Host-Contractor Communications, Information-Transfer Requirements, Arc-Flash Protection, Job-Briefing Requirements, Fall Protection, Information Transfers, Line Clearance Tree Trimming Operations, and Minimum Approach Distances. OSHA expects the final rule to result in an increased degree of safety for the affected employees, thereby reducing the number of accidents, injuries, and fatalities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. The major cost elements will include Host-Contractor Communications and Arc-Flash PPE. OSHA expects the net benefits of the final rule to reach \$179 million annually. Compliance costs specific to this state were not available.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) There are no costs associated with the enforcement of either final rule.

(b) On a continuing basis: There are no continuing costs associated with either final rule.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as

effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:317, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:317, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. The major cost elements will include Host-Contractor Communications and Arc-Flash PPE. OSHA expects the net benefits of the final rule to reach \$179 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the June 13, 2013 final rule updating references to national consensus standards for signage.

(d) How much will it cost to administer this program for subsequent years? OSHA provides that compliance with the entire

April 11, 2014 final rule will have a total annualized cost of \$49 million. The major cost elements will include Host-Contractor Communications and Arc-Flash PPE. OSHA expects the net benefits of the final rule to reach \$179 million annually. Compliance costs specific to this state were not available. There are no expected costs associated with the June 13, 2013 final rule.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. OSHA expects the net benefits of the final rule to reach \$179 million annually. No information was available specific to this state.

## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and Training (Amendment)

### 803 KAR 2:318. Electrical.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1910.301-1910.399

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1910.301-1910.399 establishes the federal requirements relating to electrical safety. This administrative regulation establishes electrical safety standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner of the Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. (1) General industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1910.301 through 29 C.F.R. 1910.399, and Appendices, revised July 1, 2013; and

(b) The revisions to 29 C.F.R. 1910.331 and 29 C.F.R. 1910.399 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014].

(2) The term "may not" as used in the federal regulations shall be considered a prohibition.

Section 3. (1) 29 C.F.R. 1910.333(b)(2)(iii)(C) is amended to read as follows: "If a lock cannot be applied, tagging procedures shall provide a level of safety equivalent to that obtained by the use of a lock, as outlined in paragraph (b)(2)(iii)(D)."

LARRY ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in

writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. 1910. Section 2 also updates the C.F.R. to July 1, 2013 and establishes the amendments to 29 C.F.R. 1910.331 and 399, Subpart S published in the April 11, 2014 Federal Register, Volume 79, Number 70. Section 3 of this administrative regulation adds requirements which are worded differently than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. The Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of this final rule 803 KAR 2:318 must be amended to include the adopted changes. This April 11, 2014 final rule is removing the definition of "line-clearance tree trimming" from 1910.399 and revising 1910.331(c)(1) to include that the definition of "line-clearance tree trimming" can be found in 1910.269(x). Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:318, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Section 2 updates the C.F.R. to July 1, 2013 and establishes the amendments to Subpart S of 29 C.F.R. 1910 published in the April 11, 2014 Federal Register, Volume 79, Number 70. As a result of the adoption of this final rule 803 KAR 2:318 must be amended to include the adopted changes. Remove the definition of "line-clearance tree trimming" from 1910.399 and revise 1910.331(c)(1) to include the definition of "line-clearance tree trimming" in 1910.269(x). This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative

regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:318, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The April 11, 2014 final rule will not impact business by these amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revisions, OSHA does not expect any costs associated with these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. There will be no costs to implement these specific amendments.

(b) On a continuing basis: There will be no costs on a continuing basis to implement these amendments to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is

mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:318, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:318, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation carries requirements which are different than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. It was originally adopted and effectively enforced by the Kentucky OSH Program since 1991. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this administrative regulation carries requirements which are different than those required by OSHA. This section sets forth requirements pertaining to the use of tags, instead of locks, for tagging out electrical equipment. It was originally adopted and effectively enforced by the Kentucky OSH Program since 1991. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendments of these regulations

(d) How much will it cost to administer this program for subsequent years? There are no expected costs to implement these specific amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: These specific amendments to these regulations are not expected to create any additional costs to the entities. No information was available specific to this state.

**LABOR CABINET**

**Department of Workplace Standards**

**Division of Occupational Safety and Health Compliance**

**Division of Occupational Safety and Health Education and Training  
(Amendment)**

**803 KAR 2:400. Adoption of 29 C.F.R. 1926.1-6.**

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 require the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulation published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.1- 6, revised July 1, 2013;

(2) The revisions to 29 C.F.R. 1926.6 as published in the June 13, 2013 Federal Register, Volume 78, Number 114 and corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215; and

(3) The revisions to 29 C.F.R. 1926.6 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2012; and

(2) The revisions to 29 C.F.R. 1926.6, as published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards

Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.6 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. Section 2 also establishes the amendments to 29 C.F.R. 1926.6 published in the April 11, 2014 Federal Register, Volume 79, Number 70. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:400 must be amended to include the adopted changes. The April 11, 2014 OSHA final rule is removing and reserving outdated references to national consensus standards for electrical PPE. With the June 13, 2013 final rule OSHA is amending references to signage consensus standards to incorporate the most current version of the consensus standards. This revision will allow those required to have signage to follow the "old" version that is currently being enforced or the newest version that is being added to the regulation. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:400, related to both final rules were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.6 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus standards incorporated by reference within OSHA standards. Section 2 also establishes the amendments to 1926.6 published in the April 11, 2014 Federal Register, Volume 79, Number 70. This amendment related to this final rule is removing and reserving outdated references to national consensus standards for electrical PPE. This amendment also updates this administrative regulation

to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:400, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The April 11, 2014 amendment does not require any additional compliance requirements by the employer. The June 13, 2013 direct final rule, does not require any additional compliance requirements with the update of incorporations by reference of national consensus standards for signage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected costs associated with the April 11, 2014 final rule removing and reserving outdated references to national consensus standards for electrical PPE. There are no expected costs associated with the June 13, 2013 direct final rule updating referenced to national consensus standards for signage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor

directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2013 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:400 were adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the June 13, 2014 final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:400 were adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no expected costs associated with the April 11, 2014 final rule removing and reserving outdated references to national consensus standards for electrical PPE. Additionally, no cost are expected from the implementation of the June 13, 2012 direct final rule related to national consensus standards for signage.

(d) How much will it cost to administer this program for subsequent years? No costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

**803 KAR 2:404. Personal protective and lifesaving equipment.**

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.95-1926.107

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. 1926.95 to 1926.107 establish the federal requirements relating to personal protective and lifesaving equipment. This administrative regulation establishes personal protective and lifesaving equipment standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary of Labor, Kentucky Labor Cabinet or Commissioner of the Department of Workplace Standards.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Division of Occupational Safety and Health.

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, except as modified by the definitions in Section 1 of this administrative regulation:

(1) 29 C.F.R. 1926.95 through 29 C.F.R. 1926.107, revised July 1, 2013; and

(2) The amendments to 29 C.F.R. 1926.97 as published in the April 11, 2014, Federal Register, Volume 79, Number 70[2012; and

(2) The amendment to 29 C.F.R. 1926.100 published in the June 22, 2012 Federal Register, Volume 77, Number 121, corrected in the July 23, 2012 Federal Register, Volume 77, Number 141, and confirmed in the November 16, 2012 Federal Register, Volume 77, Number 222].

LARRY ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals

interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers in general industry to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 1, 2013 and establishes the amendments to 29 C.F.R. 1926.97, of Subpart E published in the April 11, 2014 Federal Register, Volume 79, Number 70. The amendments to this standard were adopted by the OSH Standards Board on May 06, 2014. As a result of the adoption of this final rule 803 KAR 2:404 must be amended to include the adopted changes. The April 11, 2014 final rule is amending the Electric Power Generation, Transmission, and Distribution standard in construction and general industry to make them more consistent with one another. OSHA is adopting a new construction standard, 1926.97. The final rule amendments specific to 1926.97 address design requirements for specific types of electrical protective equipment. Types of equipment include rubber insulating blankets, rubber insulating covers, rubber insulating gloves and sleeves. This final rule relies on provisions from the national consensus standards that are performance based. This allows greater flexibility for compliance while accommodating changes in technology. These requirements will apply to all construction. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:404, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Section 2 updates the C.F.R. to July 1, 2013 and establishes the amendments to Subpart E of 29 C.F.R. 1926 published in the April 11, 2014 Federal Register, Volume 79, Number 70. As a result of the adoption of this final rule 803 KAR

2:404 must be amended to include the adopted changes. The specific amendments to 1926.97, Electrical Protective Equipment in construction will make them consistent with the amended PPE standard in general industry, 1910.137 construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:404, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Design requirements for specific types of electrical protective equipment in construction will provide a more effective means of protecting employees from electric shock than existing OSHA standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No information was available specific to this state.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: OSHA provides that compliance with the entire April 11, 2014 final rule will have a total annualized cost of \$49 million. No cost estimate was given to implement these specific amendments.

(b) On a continuing basis: No cost estimate was given to implement these amendments to the administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:404, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:404, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The April 11, 2014 final rule will have a total annualized cost of \$49 million. No information was specific to local governments.

(d) How much will it cost to administer this program for subsequent years? The April 11, 2014 final rule will have a total annualized cost of \$49 million. No information was specific to local governments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.



Other explanation: No information was specific to local governments.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

**803 KAR 2:406. Signs, signals, and barricades.**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet;

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.200-1926.203, revised July 1, 2013; and

(2) The revisions to 29 C.F.R. 1926.200-202 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215 [The construction industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions established in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The revisions to 29 C.F.R. 1926.200, 1926.201, 1926.202, and Appendices, as published in the September 12, 2002, Federal Register, Volume 67, Number 177; and

(b) 29 C.F.R. Part 1926, revised as of July 1, 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to

the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926. 200-202 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned direct final rules 803 KAR 2:406 must be amended to include the adopted changes. With the June 13, 2013 direct final rule OSHA is updating its references to national consensus standards for signage. OSHA's rule will update references to the American National Standards Institute (ANSI) standards within the rules for accident prevention signs and tags throughout the regulations. The direct final rule amendments specific to this KAR updates references to signage requirements that are incorporated within the construction signage regulations. This final rule also updates the standard by removing language related to approval for incorporation by just referencing 1926.6. The revision to the standard permits employers to either follow the old consensus standard requirements or they may follow the updated version. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926. 200-202 published in the June 13, 2013 Federal Register, Volume 78, Number 114, which was corrected and confirmed in the November 6, 2013 Federal Register, Volume 78, Number 215. The amendments to the regulation revise references to consensus

standards incorporated by reference within OSHA standards allowing the employer to follow the old or updated consensus standard. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment changes references to consensus standards incorporated by reference within OSHA's standards. No additional compliance duties are expected from the revisions to Subpart G.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the direct final rule updating references to a national consensus standard.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

**803 KAR 2:412. Fall protection.**

RELATES TO: KRS 338.015, 338.031, 338.051, 338.061, 29 C.F.R. 1926.500-1926.503

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061(1) and 338.061(1) require the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance relating to fall protection. This administrative regulation requires employers to comply with federal standards except for certain limited construction activities in which the fall protection trigger height is changed from six (6) feet to ten (10) feet. When engaged in those limited activities, employers may choose compliance options not provided in the federal standards.

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Eave" means the horizontal lower edge of a roof.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Fall restraint system" means a system that:

(a) Is used to prevent an employee from falling any distance consisting of an anchorage, connectors, and body belt or harness; and

(b) May include lanyards, lifelines, or rope grabs designed for that purpose.

(6) "Guardrail system" is defined in 29 C.F.R. 1926.500(b).

(7) "Leading edge" is defined in 29 C.F.R. 1926.500(b).

(8) "Personal fall arrest system" is defined in 29 C.F.R. 1926.500(b).

(9) "Rake edge" means the roof edge at the gable end of a structure.

(10) "Residential construction" means construction work on a standalone single family dwelling, duplex, threeplex, or fourplex structure.

(11) "Roofing work" is defined in 29 C.F.R. 1926.500(b).

(12) "Safety monitoring system" is defined in 29 C.F.R. 1926.500(b).

(13) "Safety net system" means a system used in accordance with 29 C.F.R. 1926.502(c).

(14) "Slide guard system" means an equipment system that:

(a) Is designed to prevent employees from sliding off a sloped roof to a lower level; and

(b) Consists of manufactured roof brackets used in conjunction with dimensional lumber or may be a site-built system of similar design and dimension.

(15) "Slope" means the roof vertical rise in inches for every horizontal twelve (12) inch length, with:

(a) The horizontal twelve (12) inch length referred to as the run;

(b) The slope referred to as pitch; and

(c) The slope expressed with the rise (vertical) mentioned first and the run (horizontal) mentioned second, such as "4 in 12" or "4 on 12" and written as "4 in 12" or "4:12" or "4/12."

(16) "Three (3) points of contact" means either:

(a) One (1) hand and both feet; or

(b) One (1) foot and both hands.

(17) "Visible defect" means saw cuts, warps, twists, holes, splits, breaks, or gouges.

(18) "Walking/working surface" is defined in 29 C.F.R. 1926.500(b).

Section 2. (1) The construction industry shall comply with the following federal regulations, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:

(a) 29 C.F.R. 1926.500 through 29 C.F.R. 1926.501(b)(12), revised July 1, 2013[2014];

(b) 29 C.F.R. 1926.501(b)(14) through 29 C.F.R. 1926.503, revised July 1, 2013; and

(c) The amendment to 29 C.F.R. 1926.500 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014]; and

(e) The amendment to 29 C.F.R. 1926.500 as published in the August 9, 2010 Federal Register, Volume 75, Number 152].

(2) An employer may utilize Appendices A, B, C, D, and E to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, except the Sample Fall Protection Plan for Residential Construction found in Appendix E.

(3) The Nonmandatory Sample Fall Protection Plan for Residential Construction may be used and is incorporated by reference in Section 4 of this administrative regulation.

Section 3. Residential Construction. (1) General.

(a) While engaged in residential construction activities, employees working ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section while exposed to any of the following:

1. Unprotected sides and edges;

2. Leading edges;

3. Hoist areas;

4. Form work and reinforcing steel; or

5. Roofing work on roof slopes three (3) in twelve (12) or less.

(b) The employer shall use a measure that meets the criteria established in this section and shall not be required to demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, or personal fall arrest systems before using a measure provided in this section.

(c) If an employer can demonstrate that it is infeasible or creates a greater hazard to use guardrail systems, safety net systems, personal fall arrest systems, or a measure established in this section, for a particular workplace situation, the employer shall develop and implement a written fall protection plan which meets the requirements of 29 C.F.R. 1926.502(k) for a particular workplace situation in lieu of implementing guardrail systems, safety net systems, personal fall arrest systems, or a measure provided in this section.

(2) Floor system.

(a) Employees engaged in residential construction floor system work exposed to a fall hazard ten (10) feet or more above a lower level to the exterior of the structure being constructed shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(b) Employees engaged in residential construction floor system work exposed to an interior fall hazard ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first joist or truss shall be placed into position and secured by workers on the ground, from ladders, or from a scaffold system.

2. Successive joists or trusses shall be placed into position and then secured from a secured temporary platform.

3. The temporary platform shall be at least eighteen (18) inches wide and secured.

4. An employee performing the work shall work from the platform and remain on the platform.

(c) Employees engaged in leading edge residential construction floor system work ten (10) feet or more above a lower

level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or, if the floor joists or trusses are eighteen (18) inches on center or less, the measures established in this paragraph.

1. The first row of floor sheathing shall be placed into position, installed, and secured from the ground, from ladders, from a scaffold system, or from a secured temporary platform at least eighteen (18) inches wide.

2. An employee performing the work shall work from the platform and remain on the platform.

3. After the first row of sheathing has been installed and secured, only employees performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

4. After two (2) rows of sheathing have been installed, only an employee performing the installation shall work from the established and secured deck or from a secured temporary platform at least eighteen (18) inches wide.

5. All other employees shall remain at least four (4) feet away from the leading edge.

(3) Roof system.

(a) Employees engaged in residential construction roof truss or rafter work ten (10) feet or more above a lower level shall:

1. Be protected by guardrail systems, safety net systems, personal fall arrest systems; or

2. Personal fall restraint systems or implement the measure established in paragraph (b) of this subsection.

(b) The employee releasing the hoist line or installing the bracing shall:

1. Move or work from within the webbing of the truss or within the rafters on a secured temporary platform at least eighteen (18) inches wide; or

2. Maintain three (3) points of contact while moving or working within the webbing of the trusses or within the rafters.

(c) Employees shall not move or work outside the webbing of the trusses or outside the rafters unless utilizing a personal fall arrest system or personal fall restraint system.

(d) Employees engaged in roof sheathing may utilize a slide guard system in accordance with the provisions established in subsection (5) of this section.

(e) Employees engaged in residential construction attic work ten (10) feet or more above a lower level shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or the measures established in this paragraph.

1. Employees shall move or work from within the webbing of the trusses or within the rafters on a secured temporary platform at least eighteen (18) inches wide.

2. Employees shall remain on the platform while performing the work.

(4) Roofing work.

(a) Supplies or materials shall not be placed or stored within six (6) feet of the roof edge.

(b) A person shall not ascend, work on, or descend the roof within six (6) feet of the rake edge except while applying or removing roofing materials or equipment.

(c) Warning line systems.

1. Employees engaged in residential construction roofing work ten (10) feet or more above a lower level on roof slopes three (3) in twelve (12) or less shall be protected by guardrail systems, safety net systems, personal fall arrest systems, personal fall restraint systems, or a combination of warning line system and guardrail system, warning line system and safety net system, warning line system and personal fall arrest system, warning line system and safety monitoring system. On roofs fifty (50) feet or less in width, a safety monitoring system alone may be used. Appendix A to Subpart M of 29 C.F.R. Part 1926, revised July 1, 2005, may be used as a guideline to determine roof width.

2. Employees performing residential construction roofing work between a roof edge and a warning line shall be protected by guardrail systems, safety net systems, personal fall arrest systems, or personal fall restraint systems.

(5) Slide guard systems.

(a) Employers and employees installing residential construction roof sheathing with a ground to eave height up to twenty-five (25) feet or engaged in residential construction roofing work with a ground to eave height up to twenty-five (25) feet may utilize a slide guard system in accordance with the provisions established in this subsection with a safety monitor system meeting the requirements of 29 C.F.R. 1926.502(h)(1) through (h)(4).

(b) Slide guards systems shall not be used with a slope less than four (4) in twelve (12) or greater than eight (8) in twelve (12).

(c) Employers and employees installing residential construction roof sheathing who utilize a slide guard system shall install the slide guard system immediately after the first row of sheathing is installed.

(d) Slide guard systems shall comply with the following provisions.

1. Each slide guard system shall be installed, utilized, and removed under the supervision of a competent person, as defined in 29 C.F.R. 1926.32(f).

2. Each slide guard system shall be used in accordance with the manufacturer's specifications, limitations, and recommendations.

3. Each slide guard system shall be maintained in accordance with the manufacturer's specifications and recommendations.

4. The manufacturer's specifications shall be available at the jobsite for review if the slide guard system is not utilized and maintained in accordance with this subsection.

5. Each slide guard system shall be inspected for visible defects by a competent person before each work shift and after any occurrence which could affect the slide guard system's structural integrity.

6. For each slide guard system, each damaged or weakened component shall be immediately replaced or repaired.

7. For each slide guard system, if replacement or repair of a damaged or weakened component is not feasible, work shall be suspended until:

a. The damaged or weakened component is replaced or repaired; or

b. Another form of fall protection is utilized.

8. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

9. Unless required otherwise by the manufacturer's specifications, all perpendicular slide guard members shall:

a. Be number two (2) or better construction grade lumber;

b. Have a minimum dimension of two (2) inches nominal by six (6) inches nominal;

c. Use lumber that is free from cracks or other visible defects; and

d. Use other type of material that meets the same dimensions and is equivalent in strength, with the engineering specifications available at the site for review.

10. All perpendicular slide guard members shall be secured to the brackets and protected against cantilevering or failure due to material flex.

11. All slide guard systems shall be on the same walking/working surface as the employee being protected.

12. A continuous slide guard system below the walking or working area shall be installed along the eave no closer than six (6) inches from the eave and remain in place until the work is completed.

13. Additional continuous slide guards systems shall be installed below each walking or working area no more than eight (8) feet apart vertically.

14. The additional slide guards shall be installed using the following procedure:

a. The employee, while standing on the slide guard below, shall secure the roof bracket, or jack, for the next slide guard;

b. The employee shall install and secure the next perpendicular slide guard member;

c. The employee shall then climb up to the new slide guard to continue work;

d. This sequence shall be repeated as work proceeds up the roof;

e. Once the work is complete and the slide guards are to be removed, the employee shall climb down to the next lower slide guard;

f. The employee shall remove the perpendicular slide guard member from the slide guard above;

g. The employee shall remove the roof brackets, or jacks, above;

h. The employee shall repeat the sequence down the roof; and

i. When all above slide guards have been removed, the slide guards at the eave shall be removed.

15. Manufactured roof brackets, or jacks, shall:

a. Be a minimum of six (6) inch brackets;

b. Be secured according to the manufacturer's specifications, limitations, and recommendations;

c. Bear on a solid surface so that all anchors penetrate the roof's surface and the rafter or truss below, unless specified otherwise by the manufacturer's specifications;

d. Not be spaced greater than eight (8) feet apart horizontally or according to the manufacturer's specifications, whichever is less; and

e. Have the manufacturer's specifications available at the jobsite for review if the manufactured roof brackets, or jacks, are not utilized in accordance with the provisions established in this subparagraph.

16. Nonmanufactured, job, or site made slide guard systems shall comply with the provisions established in this subparagraph.

a. Horizontal members shall be anchored with a minimum of two (2) sixteen (16) "penny", or 16d, common nails at least every four (4) feet so that all nails penetrate the roof's surface and the rafter or truss below.

b. The face of all slide guard members shall be ninety (90) degrees perpendicular to the roof surface.

c. Horizontal and perpendicular members shall be number two (2) or better construction grade lumber and have a minimum dimension of two (2) inches nominal by six (6) inches nominal.

d. Perpendicular members shall be anchored to the horizontal members with a minimum of one (1) sixteen (16) "penny", or 16d, common nail at least every two (2) feet.

e. The perpendicular member shall be provided with support bracing at least every six (6) feet.

f. More than one (1) person shall not occupy any given eight (8) feet of a job made slide guard system.

g. Engineering specifications shall be available at the site for review if the design or installation does not meet the minimum specifications established in this subparagraph. An engineer's seal shall not be required. Engineering specifications shall establish that nonmanufactured, job, or site made slide guard systems shall be equivalent to a system constructed in accordance with the provisions established in this subparagraph.

Section 4. Incorporation by Reference. (1) A "Non-Mandatory Sample Fall Protection Plan for Residential Construction", August 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, 1047 US Highway 127 South, Suite 4, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the agency's Web site at [www.labor.ky.gov](http://www.labor.ky.gov).

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.500 through 1926.501(b)(12) and 1926.501(b)(14) through 1926.503, revised July 1, 2013, thus updating the C.F.R. and related Appendices. Section 2 also amends 1926.500 as published in the April 11, 2014 Federal Register, Volume 79, Number 70. Section 3 of the regulation sets forth requirements related to the residential construction industry and fall protection requirements. The Kentucky OSH Standards Board adopted the amendments related to the July 1, 2013 Federal Register on May 6, 2014. As a result of the adoption of the final rule 803 KAR 2:412 must be amended to include the adopted changes. The April 11, 2014 final rule is amending the scope of 1926.500(a)(2)(vi), Fall Protection, to include employees working from aerial lifts or on poles, towers, or similar structures while engaged in the construction of electric transmission or distribution lines or equipment provided in Subpart V. The final rule is also amending 1926.500(a)(3)(iii), by replacing references to personal climbing equipment, lineman's body belts, safety straps, and lanyards, with "fall arrest and work-positioning equipment" provided in Subpart V of this part. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:412, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires the construction industry to comply with the requirements of 29 Code of Federal Regulations (C.F.R.) 1926.500 through 1926.501(b)(12) and 1926.501(b)(14) through 1926.503, revised July 1, 2010, thus updating the C.F.R.. Section 2 also amends 1926.500 as published in the April 11, 2014 Federal Register, Volume 79, Number 70. The amendments related to the April Federal Register will change the requirements for employees using fall protection while engaged in the construction of electric transmission and distribution lines and equipment in Subpart V. It will also change the requirements for employees using fall arrest

and work-positioning equipment that is provided in Subpart V. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2: 412, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Revising the requirements for fall protection while engaged in the construction of electric transmission or distribution lines or equipment will provide a more effective means of protecting employees from falls than existing OSHA standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The April 11, 2014 final rule will have a total annualized cost of \$49 million. Compliance costs specific to this state was not available.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2: 412, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2: 412, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards in that it requires safety fall protection at ten (10) feet rather than fifteen (15) feet, thus making for safer working conditions for Kentucky workers. This state-specific amendment has been enforced since October 7, 2011. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this administrative regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards in that it requires safety fall protection at ten (10) feet rather than fifteen (15) feet, thus making for safer working conditions for Kentucky workers. This state-specific amendment has been enforced since October 7, 2011. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first

year? The April 11, 2014 final rule will have a total annualized cost of \$49 million. No information was specific to local governments.

(d) How much will it cost to administer this program for subsequent years? The April 11, 2014 final rule will have a total annualized cost of \$49 million. No information was specific to local governments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was specific to local governments.

## LABOR CABINET

### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and Training (Amendment)

### **803 KAR 2:421. Adoption of 29 C.F.R. Part 1926.950-968[960].**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.950 – 968[960]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation[and the requirements of subsection (4) of this section], the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1)[Amend subparagraph 1926.950(c)(1)(i) to read as follows: "The employee is insulated or guarded from the energized part. Insulating gloves, as well as insulating sleeves if necessary, rated for the voltage involved shall be considered insulation of the employee from the energized part...";

{2}] 29 C.F.R. 1926.950-1926.967[1926.960], revised as of July 1, 2013; and

{2} The amendments to Subpart V of 29 C.F.R. 1926 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014]; and {3} 29 C.F.R. 1926.952 as amended and published in the August 9, 2010 Federal Register, Volume 75, Number 152].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926 and sets forth a state-specific requirement related to electric power transmission and generation. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to Subpart V of 1926 published in the April 11, 2014 Federal Register, Volume 79, Number 70. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the final rule 803 KAR 2:421 must be amended to include the adopted changes. The April 11, 2014 final rule is amending Subpart V in construction, 1926.950 through 1926.968 to make it more consistent with the general industry standard 1910.269, Electric power generation, transmission, and distribution. By being consistent, these new amendments simplify the requirements for employers in construction and general industry. The final rule also specifies that employers who comply with 1910.269 generally will be considered in compliance with the requirements of Subpart V. The final rule will include new or revised provisions on host employers and contractors, job briefings, fall protection, minimum approach distances, protection from electric arcs, operating mechanical equipment near overhead power lines, de-energizing transmission and distribution lines, and insulation and working position of employees working on or near live parts. This final rule added a number of regulations (1910.961-968) to the Subpart requiring changes to the [Related to:] section of the KAR. It also replaced wording related to Kentucky state-specific requirement in Section 2(1) allowing the program to delete the requirement and the OSH Standards Board to adopt the requirement as amended by the April 11, 2014 Federal Register during the May 06, 2014 meeting. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:421, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 updates the C.F.R. to July 1, 2013 and establishes the amendments to Subpart V of 29 C.F.R. 1926 published in the April 11, 2014 Federal Register, Volume 79, Number 70. As a result of the adoption of this final rule 803 KAR 2:421 must be amended to include the adopted changes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:421 were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The April 11, 2014 final rule adds new regulations to Subpart V. This includes cost for Host-Contractor Communications, Expanded Job Briefings, and Arc-Flash PPE.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The April 11, 2014 final rule will have a total annual cost of 49 million dollars. This includes cost for Host-Contractor Communications, Expanded Job Briefings, and Arc-Flash PPE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor

directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:421, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:421, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The April 11, 2014 final rule will have a total annual cost of 49 million dollars.

(d) How much will it cost to administer this program for subsequent years? The April 11, 2014 final rule will have a total annual cost of 49 million dollars.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative



regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No information was available specific to this state.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Amendment)**

**803 KAR 2:423. Adoption of 29 C.F.R. Part 1926.1050-1060.**

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.1050 - 1060

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules, administrative regulations, and standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1050 - 1926.1060 as revised July 1, 2013; and

(2) The amendments to 29 C.F.R. 1926.1053 as published in the April 11, 2014 Federal Register, Volume 79, Number 70[2014]; and (2) 29 C.F.R. 1926.1050 as amended in the August 9, 2010 Federal Register, Volume 75, Number 152].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.1053, published in the April 11, 2014 Federal Register, Volume 79, Number 70. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned final rule 803 KAR 2:423 must be amended to include the adopted changes. With the April 11, 2014 final rule OSHA is revising 1926.1053(b)(12), Ladders, by replacing 1926.951(c)(1) with 1926.955(b) and (c) of this standard. This standard does not require ladders to have nonconductive side rails while being used in conjunction with overhead line work. It simply amends a reference to an exception requirement within the regulation. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:423, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.1053 as published in the April 11, 2014 Federal Register, Volume 79, Number 70. This revision does not require ladders to have nonconductive side rails while being used in conjunction with overhead line work. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments to 803 KAR 2:423, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all private and public sector employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not add occupational safety and health requirements of the employer. It simply amends a reference to exception requirements in another standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because the amendment requires no new occupational safety and health requirements, no costs are expected to be associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this regulation.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this revision.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ordinary administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments in the April 11, 2014 Final Rule were adopted by the OSH Standards Board on May 6, 2014.

3. Minimum or uniform standards contained in the federal mandate. Kentucky's Occupational Safety and Health program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of a new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments in the April 11, 2014 Final Rule were adopted by the OSH Standards Board on May 6, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter, additional, or different requirements or responsibilities than those required by the federal standards.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? This amendment will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years? This amendment will not impose any cost to the employer. There are no expected costs associated with the April 11, 2014 final rule revising the amendment for ladders.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There will be no increase or decrease in local government revenues as a result of this amendment.

Expenditures (+/-): The specific amendment to this regulation is not expected to create any additional costs to the entities.

Other Explanation: No information was available specific to this state.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. This administrative regulation establishes maritime employment standards to be enforced by the Department of Workplace Standards in the maritime industry.

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Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915, revised July 1, 2013[2012], relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917, revised July 1, 2013[2012], relating to maritime terminals;

(3) 29 C.F.R. Part 1918, revised July 1, 2013[2012], relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919, revised July 1, 2013[2012], relating to gear certification; and

(5) The revisions to 29 C.F.R. Part 1917 as published in the April 21, 2014 Federal Register, Volume 79, Number 76[The revisions to 29 C.F.R. 1915.1001 as published in the February 8, 2013 Federal Register, Volume 78, Number 27].

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1915, 1917, 1918, and 1919. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1917.71 published in the April 21, 2014 Federal Register, Volume 79, Number, 76. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the direct final rule, 803 KAR 2:500 must be amended to include the adopted changes. With the April 21, 2014 final rule-remand, OSHA is amending requirements related to vertical tandem lifts which was required through a court-ordered remand. The direct final rule amendments specific to this KAR revises language of the regulation related to vertical tandem lifts ensuring the application to intermodal containers that are not

considered platform containers. The amendment also clarifies that the requirements of the standard do not apply to ship to shore transfers. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1915, 1917, 1918 and 1919. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1917.71 published in the April 21, 2014 Federal Register, Volume 79, Number 76. The amendments to the regulation revise language related to vertical tandem lifts for the maritime industry. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in maritime industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expected from the revisions related to the court-ordered remand.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Because there are no additional compliance duties based on the revision, OSHA does not expect any costs associated with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in maritime industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Because no additional compliance duties are required as a result of the revisions, no costs are associated with the amendment of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the remand to the 1917 rule, which revises language relating to vertical tandem lifts of platform containers.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. The following administrative regulation contains the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following

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federal regulation published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1441 revised July 1, 2013;

(2) The amendments to 29 C.F.R. 1926.1400 published in the May 29, 2013 Federal Register, Volume 78, Number 103; and

(3) The amendments to 29 C.F.R. 1926.1400 and 1926.1410 published in the April 11, 2014 Federal Register, Volume 79, Number 70 [29 C.F.R. Part 1926, Subpart CC, Cranes and Derricks in Construction, published in the August 9, 2010 Federal Register, Volume 75, Number 152].

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) is amended to read as follows: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) is amended to read as follows: "For assembly/disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) is amended to read as follows: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking/working surface with an unprotected side or edge more than ten (10) feet above a lower level." [As approved by the Kentucky Occupational Safety and Health Standards Board.]

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.1400 published in the May 29, 2013 Federal Register, Volume 78, Number 103 and the amendments to 1926.1400 published in the April 11, 2014 Federal Register, Volume 79, Number 70. The Kentucky OSH Standards Board adopted these amendments on May 6, 2014. As a result of the adoption of the aforementioned final rules, 803 KAR 2:505 must be amended to include the adopted changes. The April 11, 2014 direct final rule is amending the scope of 1926.1400, Cranes and Derricks in Construction, for any work covered by Subpart V that is in

compliance with 29 C.F.R. 1926.959 is now deemed in compliance with 1926.1407 through 1926.1411. This amendment will require 1926.1400, to reference the Mechanical Equipment standard in construction, instead of the general industry standard in 1910.269. It is also removing and reserving paragraph 1926.1410(d)(4)(iii), Power Line Safety (all voltages)-equipment operations closer than the Table A Zone, and amending paragraphs 1926.1410(c)(2) and 1926.1410(d)(4)(iii). This amendment requires the employer to use the approach distances found in 1926.960(c)(1)(i) instead of the clearance distances found in table V-1 in 1926.950. The amended 1926.1410(d)(4)(ii) standard removes the requirements of 1926.1410(d)(4)(i) to comply with any part of Subpart V. With the May 29, 2013 final rule, OSHA is broadening the exemption for digger derricks in the construction standard for cranes and derricks. The final rule amendment specific to this KAR requires excludes compliance with Subpart CC of the regulation if the requirements of 1910.268 are followed when using a digger derrick for specified purposes. Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the May 29, 2013 rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:505, related to both final rules were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926. Section 2 also updates the C.F.R. to July 2013 and establishes the amendments to 29 C.F.R. 1926.1400 published in the May 29, 2013 Federal Register, Volume 78, Number 103 and the amendments to 1926.1400 and 1926.1410 published in the April 11, 2014 Federal Register, Volume 79, Number 70. The amendments to the regulation related to the May Federal Register broaden the exemption requirements related to the use of digger derricks. The amendments related to the April Federal Register will require 1926.1400, to reference the Mechanical Equipment standard in construction, instead of the general industry standard in 1910.269. It also removes the requirements of 1926.1410(d)(4)(i) to comply with any part of Subpart V, and removes and reserves two other amendments. This amendment also updates the administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the May 29, 2013 direct final rule did not impose any additional or more stringent requirements on

employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:505, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes worker health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are expected from the revisions to 1926.1400 as set forth in the May 29, 2013 Federal Register. The amendments in the April 11, 2014 Federal Register will not impact business. Changing the clearance distances to approach distances found in table V-2 and V-7 of 1926.960 while working near exposed live parts will provide a more effective means of protecting employees from electric shock than existing OSHA standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The April 11, 2014 final rule will have a total annualized cost of \$49 million. No information was available specific to this state. There are no costs associated with the May 29, 2013 final rule broadening the exemption for digger derricks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the May 29, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:505, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the April 11, 2014 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements by October 11, 2014. The amendments related to the May 29, 2013 direct final rule did not impose any additional or more stringent requirements on employers than the existing standard. The Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, the amendments to 803 KAR 2:505, related to both final rules, were all adopted by the Kentucky OSH Standards Board on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 3 of this administrative regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards in that it requires safety fall protection at ten (10) feet rather than fifteen (15) feet, thus making for safer working conditions for Kentucky workers. This state-specific amendment has been enforced since October 7, 2011. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Section 3 of this administrative regulation does impose stricter, additional, or different requirements or responsibilities than those required by the federal standards in that it requires safety fall protection at ten (10) feet rather than fifteen (15) feet, thus making for safer working conditions for Kentucky workers. This state-specific amendment has been enforced since October 7, 2011. The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no costs associated with either of the related-amendments of this regulation.

(d) How much will it cost to administer this program for subsequent years? There are no expected costs associated with the May 29, 2013 final rule broadening the exemptions for digger derricks nor the final rule related to the April 11, 2014 Federal Register.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: The specific amendment to this regulation is not expected to create any additional costs to the entities. No information was available specific to this state. There are no expected costs related to the May 29, 2014 final rule.

**PUBLIC PROTECTION CABINET  
Department of Alcoholic Beverage Control  
(Amendment)**

**804 KAR 1:100. General advertising practices.**

RELATES TO: KRS 244.130, 244.500, 244.590

STATUTORY AUTHORITY: KRS 241.060, 244.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.130 authorizes the Department of Alcoholic Beverage Control to regulate the advertising of alcoholic beverages. This administrative regulation establishes standards for advertising in a manner consistent with modern marketing practices.

Section 1. Definition. "Social media" means all forms of electronic communication through which users create online communities to share information, ideas, personal messages, and other content.

Section 2. (1) A licensee may use outdoor advertising.

(2) If outdoor advertising is used by a manufacturer, producer, brewer, winery, distributor, or wholesaler, it shall not:

(a) Include a retail licensee's name or business designation (DBA); or

(b) Refer to a retail licensee in any other way.

Section 3. A licensee may advertise in material directed to the home or business of a consumer if the advertising material is in conformity with KRS 244.130 and this administrative regulation.

Section 4. (1) Except as provided by subsections (2) and (3) of this section, advertising novelties may be used.

(2) A licensee shall not require the purchase or consumption of an alcoholic beverage as a condition for the sale, gift, or reduction in price of an advertising novelty.

(3) Except as provided by KRS 244.590(2)(a), a malt beverage distributor shall not sell, give away, or furnish advertising novelties, in any manner to a retail licensee.

Section 5. A licensee may advertise by means of radio and television.

Section 6. A licensee may advertise by means of the Internet and social media.

Section 7. (1) A licensee may sponsor or cosponsor athletic leagues, tournaments, contests, and charitable events if the consumption or purchase of alcoholic beverages is not a requirement for participation.

(2) A licensee sponsoring or cosponsoring an event described

in subsection (1) of this section upon a retail licensed premises shall not require the retail licensee to purchase, sell, or distribute the products of the sponsoring licensee as a condition for participation in or in connection with the event.

Section 8. A licensee shall not use the terms "free", "complimentary", or any other terms, which imply or suggest giveaways in the advertising of alcoholic beverages.

Section 9. A licensee shall not advertise a product, service, or activity if the licensee is prohibited by statute or administrative regulation from selling, providing, or conducting it.

FREDERICK A. HIGDON, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2104 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2014, at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by June 16, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Trey Hieneman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for advertising in a manner consistent with modern marketing practices.

(b) The necessity of this administrative regulation: KRS 244.130 authorizes the Department of Alcoholic Beverage Control to regulate the advertising of alcoholic beverages.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060(1) authorizes the board promulgate administrative regulations governing advertising of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. This administrative regulation enables the board to execute its KRS 241.060(1) duty by establishing parameters for advertising of alcoholic beverages.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment to this administrative regulation specifies limitations on outdoor advertisements.

(b) The necessity of the amendment to this administrative regulation: This amendment to this administrative regulation is necessary to reestablish prohibitions against outdoor advertising by certain sectors of the alcoholic beverage industry.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060 (1) authorizes the board promulgate administrative regulations governing advertising of alcoholic beverages.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment to this administrative regulation allows the board to regulate advertisement, pursuant to KRS 241.060 (1).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment to the administrative regulation will affect all manufacturers, producers, breweries, wineries, distributors, and wholesalers in Kentucky.

(4) Provide an analysis of how entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: The previously mentioned businesses will not have to take any actions to comply with this amendment. This was an error that resulted from an amendment to this administrative regulation that was enacted in 2013. This regulation simply corrects language to ensure compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The previously mentioned businesses will receive no additional benefits to comply with this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Alcoholic Beverage Control is the only government entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060(1) authorizes the board to promulgate administrative regulations relative to advertising of alcoholic beverages.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts). This amendment will have no effect on expenditures or revenue of any level of government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first

year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

##### 900 KAR 6:055. Certificate of Need forms.

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" is defined by KRS 216B.015(6)(5).

Section 2. Forms. (1) OHP - Form 1, Letter of Intent, shall be filed by[all] applicants for a certificate of need pursuant to the requirements established in 900 KAR 6:065.

(2) OHP - Form 2A, Certificate of Need Application, shall be filed by applicants for a certificate of need unless the application is for[other than] ground ambulance services.[providers or] change of location, replacement, or cost escalation.

(3) OHP - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by applicants for a certificate of need for ground ambulance providers.

(4) OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition, shall be filed by applicants for a certificate of need for change of location, replacement, cost escalation or acquisition.

(5) OHP - Form 3, Notice of Appearance, shall be filed by persons that wish to appear at a hearing.

(6) OHP - Form 4, Witness List, shall be filed by persons that elect to call witnesses at a hearing.

(7) OHP - Form 5, Exhibit List, shall be filed by persons that elect to introduce evidence at a hearing.

(8) OHP - Form 6, Cost Escalation Form, shall be filed by facilities that elect to request an administrative escalation.

(9) OHP - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(10) OHP - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(11) OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(12) OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment, shall be filed by any health facility which adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.



(13) OHP – Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility which reduces or terminates a health service, or reduces bed capacity.

(14) OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "OHP - Form 1, Letter of Intent", 05/2009;
  - (b) "OHP - Form 2A, Certificate of Need Application", 05/2014[05/2009];
  - (c) "OHP - Form 2B, Certificate of Need Application For Ground Ambulance Providers", 05/2009;
  - (d) "OHP - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition", 05/2009;
  - (e) "OHP - Form 3, Notice of Appearance", 05/2009;
  - (f) "OHP - Form 4, Witness List", 05/2009;
  - (g) "OHP - Form 5, Exhibit List", 05/2009;
  - (h) "OHP - Form 6, Cost Escalation Form", 05/2009;
  - (i) "OHP - Form 7, Request for Advisory Opinion", 05/2009;
  - (j) "OHP - Form 8, Certificate of Need Six Month Progress Report", 05/2014[05/2009];
  - (k) "OHP - Form 9, Notice of Intent to Acquire a Health Facility or Health Service", 05/2009;
  - (l) "OHP - Form 10A, Notice of Addition or Establishment of a Health Service or Equipment", 05/2009;
  - (m) "OHP - Form 10B, Notice of Termination of a Health Service or Reduction of Bed Capacity", 05/2009; and
  - (n) "OHP - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 05/2009.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.  
900 KAR 6:055

EMILY WHELAN PARENTO, Executive Director  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014 Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference certificate of

need forms. OHP - Form 8, the Certificate of Need Six Month Progress Report form is filed by a holder of a certificate of need whose project is not fully implemented to demonstrate compliance with statutory and regulatory certificate of need implementation requirements. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B. 040(2)(a)1, KRS 216B.086 and KRS.216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation incorporates by reference various forms required for the certificate of need program. OHP - Form 8 Certificate of Need Six Month Progress Report is required to be submitted by certificate of need holders to document progress toward implementation of outstanding certificates of need. OHP- Form 2A is the certificate of need application for formal and nonsubstantive review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.086 authorizes the Cabinet to revoke a certificate of need, or portion thereof, for failure of the holder of the certificate to implement the project in accordance with timetables and standards for implementation established by administrative regulation. OHP - Form 8 is utilized by certificate of need holders to report progress made toward implementation of outstanding certificates of need. KRS 216B.040(2)(a)1 requires the Cabinet to promulgate administrative regulations as necessary for the administration of the certificate of need program. OHP-Form 2A is the application for nonsubstantive and formal review applications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable.

(b) The necessity of the amendment to this administrative regulation: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. The current form is not adequate to gauge compliance with KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A is revised to require nonsubstantive review applicants to address consistency with the State Health Plan, if applicable.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating by reference the revised OHP - Form 8 Certificate of Need Six Month Progress Report and OHP-Form 2A Certificate of Need Application.

(d) How the amendment will assist in the effective administration of the statutes: The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 6:100. OHP-Form 2A revisions will be consistent with KRS 216B.095 in that nonsubstantive review applications shall be required to address consistency with the State Health Plan, if applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Annually, approximately 250 progress reports are required to be submitted by CON holders. Annually approximately 150 certificate of need applications are submitted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities which have certificates of need which have not been implemented are required to submit progress

reports to the Cabinet utilizing OHP - Form 8. CON applicants will utilize OHP-Form 2A to submit CON application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment revises OHP - Form 8 Certificate of Need Six Month Progress Report to clarify certificate of need implementation requirements of KRS 216B.086 and 900 KAR 9:100. Nonsubstantive review applications shall be required to address consistency with the State Health Plan when completing OHP-Form 2A.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city which hold unimplemented certificates of need are required to submit Certificate of Need Six Month Progress Reports. Health care facilities owned by the state, county or city will be required to submit certificate of need applications for the establishment or change in a health service.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.086

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:070. Certificate of Need considerations for formal review.

RELATES TO: KRS 216B.010, 216B.090[216B.040], 216B.990  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040[~~(2)(a)1,~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.040(2)(a)2 requires the cabinet to promulgate an administrative regulation establishing the criteria for issuance and denial of certificates of need. This administrative regulation establishes the requirements necessary for the consideration for formal review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[~~(5)~~].

(2) "Days" means calendar days, unless otherwise specified

(3) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and in this administrative regulation.

(4) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(5) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(c) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(d) An application seeking to re-establish a licensed healthcare facility or service that was provided at the healthcare facility and which was voluntarily discontinued by the applicant shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent Certificate of Need approval; and

e. Did not occur less than twenty-four (24) months prior to the

submission of the application to re-establish;

2. The proposed healthcare service shall be provided within the same geographic service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant's[applicant has identified a need for the proposal for]in the geographic service area defined in the application is consistent with criteria, inventories, and need analysis figures maintained by the cabinet and the State Health Plan, referenced in subsection (1) of this section, and the applicant has demonstrated that it is able to meet the need identified by the criteria, inventories, and need analysis maintained by the cabinet and the State Health Plan; or;and]

(b) In the event the State Health Plan does not address the proposed health facility or service, if the applicant has identified a need for the proposal for the geographic service area defined in the application and has demonstrated that it is able to meet the need identified[in the geographic service area defined in the application].

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) The cabinet shall determine if the applicant:

1. Is prepared to, and capable of undertaking and carrying out, the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

2. Has the ability to comply with applicable licensure requirements.

(b) Absence of an applicable licensure category shall not constitute grounds for disapproving an application.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative

regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for formal review of certificate of need applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for consideration of certificate of need applications undergoing formal review.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements necessary for consideration of certificate of need applications undergoing formal review.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The regulation is changed to clarify that in determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application. When making a final decision following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling shall be applied by the Cabinet. Also, Section 2(2) Need is revised to state that the Cabinet shall determine if the applicant's proposal is consistent with criteria, inventories, and need analysis figures maintained by the cabinet and the State Health Plan or in the event the State Health Plan does not address the proposal, the applicant has identified a need for the proposal in the geographic service area defined in the application.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify which documents will be relied upon in making certificate of need decisions regarding consistency with the State Health Plan. Section 2(2) Need is revised to state that the Cabinet shall determine if the applicant's proposal is consistent with criteria, inventories, and need analysis figures maintained by the cabinet and the State Health Plan or in the event the State Health Plan does not address the proposal, the applicant has identified a need for the proposal in the geographic service area defined in the application.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements necessary for consideration for formal review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a formal review certificate of need application. Annually, approximately 150 certificate of need applications are

filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application requesting formal review will be required to meet the requirements of this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants will know the certificate of need application requirements for formal review.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county or city which submit certificate of need applications requesting formal review will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 and KRS 216B.040(2)(a)2.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

#### 900 KAR 6:075. Certificate of Need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.090[216B.095], 216B.455, 216B.990

STATUTORY AUTHORITY: KRS[494A.030,—194A.050,] 216B.040(2)(a)1, 216B.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <http://chfs.ky.gov/ohp/con>. (4) "Days" means calendar days, unless otherwise specified.

(5) "Formal review" means the review of an application for certificate of need which is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6) "Nonsubstantive review" is defined by KRS 216B.015(18).

(7) "Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.

(8) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter. ~~(9) "Therapeutic cardiac catheterization outcomes" means in-hospital mortality rates, door to balloon time, door to balloon time less than or equal to ninety (90) minutes, Percutaneous Coronary Intervention (PCI) related cardiac arrests, and emergency open heart surgeries performed as a result of the PCI.~~

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(f), the Office of Health Policy shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

~~(b) [The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;~~

(e)] The proposal involves an application to relocate or transfer certificate of need approved acute care beds or licensed acute care beds, not including neonatal Level III or IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.

1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the licensed beds are relocated delicensess those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:

a. The receiving hospital shall have an existing licensed Level II, or Level III, or IV neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

(c)](d)] The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, or neonatal Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(d)](e)] The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, or neonatal Level III beds, or Level IV beds;

2. Convert and implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds;

(e)](f)] The proposal involves an application by a psychiatric hospital to convert licensed geriatric, adult, adolescent, or child psychiatric beds to psychiatric beds and the requirements established in this paragraph are met.

1. The psychiatric hospital is located within twenty (20) miles of a United States military base;

2. The psychiatric hospital provides inpatient behavioral health services to active duty military personnel, families of active duty military personnel, and veterans;

3. The psychiatric hospital shall convert and implement the beds on-site at the existing licensed hospital; and

4. The psychiatric hospital shall delicense the same number of converted beds.

(g)] The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds between certificate of need approved nursing facilities or from a certificate of need approved nursing facility to a proposed nursing facility and the requirements established in this paragraph are met.

1. The selling or transferring facility has a certificate of need nursing facility bed inventory of at least 250 beds;

2. The transfer or relocation takes place within the same Area Development District;

3. The application includes:

a. A properly completed OHP Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055; and

b. Evidence of the selling or transferring entity's binding commitment to sell or transfer upon approval of the application; and

4. A certificate of need approved nursing facility shall not sell or transfer more than fifty (50) percent of its certificate of need approved nursing facility beds;

(h)] The proposal involves an application to establish a therapeutic cardiac catheterization program and the requirements established in this paragraph are met.

1. The applicant is an acute care hospital which was previously

~~granted a certificate of need to participate in a primary angioplasty pilot project and was evaluated after the first two (2) years of operation by an independent consultant who determined the hospital successfully demonstrated good therapeutic cardiac catheterization outcomes.~~

~~2. The applicant shall document that the nursing and technical catheterization laboratory staff are experienced and participate in a continuous call schedule.~~

~~3. The applicant shall document that the catheterization laboratory shall be equipped with optimal imaging systems, resuscitative equipment, and intra-aortic balloon pump support.~~

~~4. The applicant shall document that the cardiac care unit nurses shall be proficient in hemodynamic monitoring and intra-aortic balloon pump management.~~

~~5. The applicant shall document formalized written protocols in place for immediate and efficient transfer of patients to an existing licensed cardiac surgical facility.~~

~~6. The applicant shall utilize a Digital Imaging and Communications in Medicine (DICOM) standard image transfer system between the hospital and the backup surgical facility.~~

~~7. The applicant shall employ an interventional program director who has performed more than 500 primary PCI procedures and who is board certified by the American Board of Internal Medicine in interventional cardiology.~~

~~8. The applicant shall document that each cardiologist performing the therapeutic catheterizations shall perform at least seventy-five (75) PCIs per year.~~

~~9. The applicant shall document the ability to perform at least 200 interventions per year, with an ideal minimum of 400 interventions per year by the end of the second year of operation.~~

~~10. The applicant shall participate in the American College of Cardiology National Cardiovascular Data Registry quality measurement program.~~

~~11. The applicant shall report therapeutic cardiac catheterization data annually to the Cabinet for Health and Family Services.~~

~~12. The application shall document the applicant's ability to produce therapeutic cardiac catheterization outcomes which are within two (2) standard deviations of the national means for the first two (2) consecutive years;~~

(i)] The proposal involves an application to transfer or relocate existing certificate of need approved nursing facility beds from one (1) long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. The selling or transferring facility fails to meet regulations promulgated by the Centers for Medicare and Medicaid Services at 42 C.F.R. 483.70(a)(8) requiring nursing facilities to install sprinkler systems throughout their buildings;

2. The selling or transferring facility may sell or transfer portions of its total bed component to one (1) or more existing nursing facility;

3. The facility acquiring the beds shall be located in a county contiguous to that of the selling or transferring facility;

4. The selling or transferring facility shall be licensed only for nursing facility beds at the time of transfer or application to transfer and shall not sell or transfer more than thirty (30) of its licensed nursing facility beds to an individual facility; and

5. The application shall include a properly completed OHP Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055;

(j)] The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital [with fifty (50) or fewer licensed beds] and which was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent Certificate of Need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service which the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

~~(f)(k)1.~~ The proposal involves an application to establish an ambulatory surgical center which does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation.

(3) A Certificate of Need approved for an application submitted under subsection (2)~~(f)(k)~~ of this section shall state the limitations specified under subsection (2)~~(f)(k)~~1. and 2. of this section.

(4) If an application is denied nonsubstantive review status by the Office of Health Policy, the application shall automatically be placed in the formal review process.

(5) If an application is granted nonsubstantive review status by the Office of Health Policy, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(6)(a) If an application is granted nonsubstantive review status by the Office of Health Policy, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c) Nonsubstantive review applications shall not be comparatively reviewed unless the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan.

~~(d) Nonsubstantive review applications~~~~but~~ may be consolidated for hearing purposes.

(7) If an application for certificate of need is granted nonsubstantive review status by the Office of Health Policy, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan~~and an application granted nonsubstantive review status by the Office of Health Policy shall not be reviewed for consistency with the State Health Plan~~.

(8) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Health Policy shall approve each application for a certificate of need that has been granted nonsubstantive review status~~if:~~

~~(a) The application does not propose a capital expenditure; or~~

~~(b) The application does propose a capital expenditure, and the Office of Health Policy finds the facility or service with respect to which the capital expenditure proposed is needed, unless the cabinet finds that the presumption of need provided for in subsection (7) of this section has been rebutted by clear and convincing evidence by an affected party].~~

(9) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Applicant is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (7) of this section has been rebutted by clear and convincing evidence by an affected party.

(10) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(11) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing which is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(12) A decision to approve or disapprove an application which has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

~~(13)(14)~~ If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014 Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for review of certificate of need applications which are granted nonsubstantive review.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.040(2)(a)1 and KRS 216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements necessary for consideration of nonsubstantive review of certificate of need applications.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 216B.095 allows a certificate of need applicant to waive a formal review process and request nonsubstantive review if specific conditions

are met. This regulation establishes the requirements necessary for consideration of nonsubstantive review of certificate of need applications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The regulation is being revised to be consistent with KRS 216B.095(4) to require the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application. Also, the amendment will delete select proposal scenarios from the listing of proposals that may be granted nonsubstantive review status.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application..

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes requirements necessary for consideration for nonsubstantive review of certificate of need applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects an entity wishing to file a nonsubstantive review certificate of need application. Annually, approximately 150 certificate of need applications are filed.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application requesting nonsubstantive review will be required to meet the requirements of this regulation, including the amendment to require a nonsubstantive review application to address consistency with the State Health Plan if the Plan addresses the proposed service.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment is necessary to be consistent with KRS 216B.095(4) which requires the Cabinet to consider consistency with the State Health Plan when reviewing a nonsubstantive certificate of need application..

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Health care facilities owned by the state, county, or city which submit certificate of need applications requesting nonsubstantive review will be impacted by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.040(2)(a)1 and KRS 216B.095.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate additional revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate additional revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

## CABINET FOR HEALTH AND FAMILY SERVICES Office of Health Policy (Amendment)

### 900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920-216.2929

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the Commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions. (1) "Agent" means any entity with which the cabinet may contract to carry out its statutory mandates, and which it may designate to act on behalf of the cabinet to collect, edit, or analyze data from providers.

(2) "Ambulatory facility" is defined by KRS 216.2920(1).

(3) "Cabinet" is defined by KRS 216.2920(2).

(4) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(5) "Hospital" is defined by KRS 216.2920(6).

(6) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for:

(a) Inpatient services a hospital may provide in swing, nursing facility, skilled, intermediate or personal care beds; or

(b) Hospice care.

(7) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(8) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(9) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(10) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(11) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals. (1) Inpatient Hospitalization records. Hospitals shall document every hospitalization they provide on a Standard Billing Form and shall, from every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) Hospitals shall document on a Standard Billing Form the outpatient services they provide and shall from every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) Hospitals shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. Hospitals shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities. (1) Outpatient Services Records.

(a) Ambulatory facilities shall document on a Standard Billing Form the outpatient services they provide and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(b) Ambulatory facilities shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. Ambulatory facilities shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers. (1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless of whether the record has actually been submitted to a payor.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(c) Data on hospitalizations shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation where one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by hospitals shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by ambulatory facilities shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) All providers shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Providers shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's date log and a verification notice.

Section 6. Data Submission Timetable for Providers. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data, which during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. Providers may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency



convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers. (1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow providers thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) Providers shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) When editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) When editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers. (1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of \$500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed \$1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) Providers experiencing extenuating circumstances or hardships may request from the cabinet, in writing, a data submission extension or waiver.

(a) Providers shall request an extension or waiver from the Office of Health Policy on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) Extensions and waivers shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers. (1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, it shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) Appeals shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers. (1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. (1) Hospitals shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Additional data elements, as specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Provider Assigned Patient Control Number
Yes	*Provider Assigned Medical Record Number
Yes	*Type of Bill (inpatient, outpatient or other)
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Facility-specific NPI
Yes	*Statement Covers Period
Yes	*Patient City and Zip Code
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Admission/Start of Care Date
Yes	Admission Hour
Yes	*Type of Admission
Yes	*Source of Admission
Yes	*Patient Status (at end of service or discharge)
No	Occurrence Codes & Dates
No	Value Codes and Amounts, including birth

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	weight in grams
Yes	*Revenue Codes/Groups
Yes	*HCPCS/Rates/Hipps Rate Codes
No	Units of Service
Yes	*Total Charges by Revenue Code Category
Yes	*Payor Identification - Payor Name
Yes	*National Provider Identifier
Yes	*Diagnosis Version Qualifier - ICD version 9.0 or 10.0
Yes	*Principal Diagnosis Code
No	Principal Diagnosis Code present on admission identifier for non-Medicare claims
Yes	*Principal Diagnosis Code present on admission identifier for Medicare claims
Yes	*Secondary and Other Diagnosis Codes if present
No	Secondary and Other Diagnosis code present on admission identifier if present for non-Medicare claims
Yes	*Secondary and Other Diagnosis code present on admission identifier if present for Medicare claims
No	Inpatient Admitting Diagnosis or Outpatient reason for visit
Yes	*External Cause of Injury Code (E-code) if present
No	External Cause of Injury (E-code) present on admission identifier on non-Medicare claims if present
Yes	*External Cause of Injury (E-code) present on admission identifier on Medicare claims if present
Yes	*Principal Procedure Code & Date if present
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*Attending Physician NPI/QUAL/ID
No	Operating Clinician ID Number/NPI
No	Other Physician NPI/QUAL/ID
Yes	*Race
Yes	*Ethnicity
Yes	*Procedure Coding Method

Section 13. Required Data Elements for Ambulatory Facilities.(1) Ambulatory facilities shall ensure that each record submitted to the cabinet contains at least the data elements identified in this section and as provided on the Standard Billing Form.

(2) Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications contained in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Additional data elements, as specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities, shall be required by the cabinet to facilitate proper collection and identification of data.

Required	DATA ELEMENT LABEL
Yes	*Patient Birth date
Yes	*Patient Sex
Yes	*Zip Code
Yes	*1st Individual Payer ID#
Yes	*Admission/Start of Care Date
Yes	*Type of Bill
Yes	*Principal Diagnosis Code
Yes	*Secondary and Other Diagnosis Codes if present
Yes	*Principal Procedure Code & Date
Yes	*Secondary and Other Procedure Codes & Date if present
Yes	*1st Units of Service
Yes	*1st Charge
No	Secondary and Other Units of Service and Charge

Yes	*Total Charges for the Case
Yes	*Attending Clinician NPI
Yes	*Provider Assigned Patient ID#
Yes	*1st Insurer Group #
No	2nd Insurer Group #
Yes	*Operating Clinician NPI
Yes	*Billing Facility-specific NPI
Yes	*Federal Tax Number or Employer Identification Number (EIN)
Yes	*Statement Covers Period
Yes	*Primary Payor Name
No	Secondary Payor Name
Yes	*Race
Yes	*Ethnicity
Yes	*HCPCS/Rates/Hipps Rate Codes

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised October[January] 1, 2014; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised October[January] 1, 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

EMILY WHELAN PARENTO, Executive Director

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in Conference Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Diona Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides clarification and instruction to specified health care providers on the process necessary to submit copies of administrative claims data to the Cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation incorporates by reference the data submission manuals for hospitals and ambulatory care facilities. Revisions to the manuals were necessary to change the ICD-10-CM/PCS implementation date from October 1, 2014 to October 1, 2015.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is

necessary to ensure that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the Cabinet to publish the data and reports as required by KRS 216.2925.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms and timetables necessary to comply with the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation incorporates by reference updated data reporting manuals. Revisions to the manuals were necessary to change the ICD-10-CM/PCS implementation date from October 1, 2014 to October 1, 2015.

(b) The necessity of the amendment to this administrative regulation: On April 1, 2014, President Obama signed the Protecting Access to Medicare Act of 2014 which delayed the implementation of ICD-10-CM/PCS until 2015. This amendment is necessary to revise the data submission manuals accordingly

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by providing a standardized method of reporting by hospitals and ambulatory care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes as it provides detailed instructions for submission of required data elements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect 229 hospitals and ambulatory facilities which submit data to the Cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will collect and submit data as required. Entities are already required to submit data. This administrative regulation incorporates by reference data reporting manuals, which were revised to change the implementation of the ICD-10-CM/PCS from October 1, 2014 to October 1, 2015.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Each entity will collect and submit data as required. Entities are already required to submit data. This regulation incorporates by reference manuals that were revised to provide detailed submission requirements. Therefore, no additional cost will be incurred by entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The data reporting manuals were revised to change the implementation of the ICD-10-CM/PCS from October 1, 2014 to October 1, 2015

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs will be incurred to implement this administrative regulation. The Office of Health Policy currently collects data and has the necessary data collection system in place.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this administrative regulation will be the Office of Health Policy's existing budget. No new funding will be needed to implement the provisions of the amended regulation..

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed hospitals and ambulatory care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The authorizing statutes are KRS 216.2920-216.2929.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health

##### (Amendment)

#### 902 KAR 30:001. Definitions for 902 KAR Chapter 30.

RELATES TO: KRS 200.650-200.676, 20 U.S.C. Chapter 33, 34 C.F.R. Part 303

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the definitions for 902 KAR Chapter 30 pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Definitions. (1) "Ability to pay" means a family has an income at 200 percent of the poverty level or above.

(2) "Assessment" means the ongoing procedures used by appropriate qualified service providers throughout the child's period of eligibility in First Steps to identify:

(a) The child's unique strengths and needs, and the services appropriate to meet those needs;

(b) The resources, priorities, and concerns of the family; and

(c) The supports and services necessary to enhance the

family's capacity to meet the developmental needs of the family's infant or toddler with a disability.

(3) "Assistive technology device" means any item, piece of equipment, or product system:

(a) Whether acquired commercially off the shelf, modified, or customized;

(b) That is used to:

1. Increase, maintain, or improve the functional capabilities of a child with a disability; and

2. Implement the individualized family service plan; and

(c) Except for a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g. mapping), maintenance, or replacement of that device.

(4) "Assistive Technology Service" means a service that directly assists the child with a disability in the selection, acquisition, or use of an assistive technology device in accordance with 20 U.S.C. 1401(2).

(5) "Cabinet-approved criterion referenced instrument" means any of the three (3) assessments, incorporated by reference in 902 KAR 30:120, used to assess children from birth to three (3) years of age.

(6) "Cabinet-approved screening protocol" means a screening protocol that is:

(a) Designed to evaluate the developmental status of children; and

(b) Used by the cabinet.

(7) "Child find" is defined by KRS 200.654(3).

(8) "Consent" is defined by 34 C.F.R. 303.7.

(9) "Destruction" means the physical destruction of the record or ensuring that personal identifiers are removed so that the record is no longer personally identifiable under 34 C.F.R. 303.29.

(10) "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families.

(11) "District Early Intervention Committee" or "DEIC" is defined by KRS 200.654(6).

(12) "Early intervention record" means all records, electronic and hard copy, regarding a child that are required to be collected, maintained, or used under part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400-1482, and 902 KAR Chapter 30.

(13) "Early intervention service provider" is defined by 34 C.F.R. 303.12.

(14) "Early intervention services" is defined by 34 C.F.R. 303.13(a)-(d) and 34 C.F.R. 303.16.

(15) "Established risk" means a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

(16) "Evaluation" means the use of procedures to determine eligibility for First Steps services in accordance with 902 KAR 30:120.

(17) "Extraordinary family expenses" means those out of pocket expenses, including purchases, medical care cost, and home or automobile modifications to accommodate the needs related to the eligible child's disability, and these expenses related to other family members with a disability. These considerations do not extend to medical services for other family members without a disability.

(18) "Family-centered" means practices that:

(a) Are driven by the family's priorities and concerns;

(b) Support the family's role as the constant in a child's life;

(c) Complement a family's natural activity settings and daily routines; and

(d) Support, respect, encourage, and enhance the strengths, competence, and confidence of the family.

(19)[(48)] "First Steps" means Kentucky's early intervention system, which is defined by KRS 200.654(8).

(20)[(49)] "First Steps data management system" means the online data system that consists of each child's early intervention record and financial management data.

(21)[(20)] "Homeless child" means a child who meets the federal definition of homeless children and youths established in 42 U.S.C. 11434a(2).

(22)[(24)] "Inability to pay" means a family's income is below

200 percent of the poverty level.

(23)[(22)] "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families.

(24)[(23)] "Individualized family service plan" or "IFSP" means an individual family service plan as defined by 34 C.F.R. 303.340.

(25)[(24)] "Initial assessment" means the assessment of the child and family assessment conducted prior to the child's first IFSP meeting.

(26)[(25)] "Kentucky Early Childhood Data System" or "KEDS" means the internet based data collection system to provide data for analysis to determine the degree to which Kentucky's children are meeting the major child outcomes and learning standards required by the Office of Special Education Programs (OSEP) in the United States Department of Education and the state early childhood standards.

(27)[(26)] "Multidisciplinary team" is defined by 34 C.F.R. 303.24

(28)[(27)] "Natural environments" is defined by 34 C.F.R. 303.26.

(29)[(28)] "Parent" means:

(a) A natural, adoptive, or foster parent of a child;

(b) A guardian, except for the state if the child is a ward of the state;

(c) An individual acting in the place of a natural or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(d) An individual assigned as a surrogate parent pursuant to 20 U.S.C. 1439(a)(5).

(30)[(29)] "Part C Coordinator" means the individual designated by the cabinet to be Kentucky's liaison with the federal Department of Education, Office of Special Education Programs (OSEP) to oversee the state's implementation of the early intervention system.

(31)[(30)] "Participating provider or agency" is defined by 34 C.F.R. 303.403(c).

(32)[(34)] "Period of eligibility" means the time from referral to First Steps to termination of services due to:

(a) Failure to meet initial program eligibility requirements;

(b) Attainment of age three (3);

(c) Documented refusal of service by the child's parent or legal guardian, inclusive of disappearance; or

(d) Change of residence to another state.

(33) "Personally identifiable" means information that contains:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identifier, such as the child's social security number or TOTS number; or

(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(34)[(32)] "Point of entry" or "POE" is defined by KRS 200.654(12).

(35)[(33)] "Prematurity" means a gestational age, at birth, of less than thirty-seven (37) weeks.

(36)[(34)] "Primary referral source" is defined by 34 C.F.R. 303.302(c) and 34 C.F.R. 303.303(c).

(37)[(35)] "Primary service provider" means a professional who is a member of the IFSP team and is selected by the parent as the team lead to provide regular support to the family.

(38)[(36)] "Qualified service provider" means a provider who meets the qualifications listed in 902 KAR 30:150.

(39)[(37)] "Record review team" means a group of early intervention experts representing each discipline of early intervention providers as listed in 902 KAR 30:150, Section 2(1)(a)-(r), who are utilized by the state lead agency to review complex cases for eligibility and service provision, and make recommendations to IFSP teams.

(40)[(38)] "Referral" means a child identified between birth and three (3) years of age who is:

(a) A Kentucky resident or a homeless child within the

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boundaries of the Commonwealth; and

(b) Suspected of having an established risk diagnosis or a developmental delay.

(41)[(39)] "State Lead Agency" means the designated staff in the Department for Public Health who are responsible for implementing the First Steps Program in accordance with 34 C.F.R. 303.22, 20 U.S.C. Chapter 33, and KRS 200.650 to 200.676.

(42)[(40)] "Ward of the state" means a child declared by a circuit court judge to be a ward of the state pursuant to KRS 625.043(2) or 625.100(2).

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:001:

(a) What this administrative regulation does: This administrative regulation provides definitions unique to the early intervention system as defined by Pub.L. 108-446, the Individuals with Disabilities Education Improvement Act.

(b) The necessity of this administrative regulation: 902 KAR 30:001 is necessary to define specific terminology used in the early intervention system.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650 requires that the Cabinet for Health and Family Services be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment adds the following definitions: extraordinary family expenses and personally identifiable information. The amendment expands the definition of early intervention service.

(b) The necessity of the amendment to this administrative regulation: KRS 200.650 (6) requires compliance with federal law. KEIS needs to update the state regulations to stay in compliance with the updated federal regulations, 34 C.F.R. Part 303 released in September 2011.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment adds or expands the definitions related to early intervention services to conform to the updated definitions in federal regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities will continue to provide early intervention services as they currently practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for continued funding and participation in First Steps.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis: There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if this is an amendment: No increase in fees or funding is necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees? No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry offices, 1500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation provides clarification of program terms.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for subsequent years? There will be no revenues generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during the subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal Statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart A - General list the definitions commonly used in early intervention services. As a recipient of federal Part C monies, Kentucky Early Intervention Services is mandated to fully comply with all federal statutes. The changes in the definitions bring KEIS into full compliance with this federal statute and are required for continued receipt of those funds.

2. State compliance standards KRS 200.650 charges the Cabinet for Health and Family Services and the Department for Public Health to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding definitions the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:110. Point of Entry and service coordination.

RELATES TO: KRS 200.662, 200.664, 200.668, 200.670, 34 C.F.R. 303.34, 303.164, 303.165, 303.167, 303.303, 303.342, 303.344, 303.403, 303.421, 20 U.S.C. 1400, 1435, 42 U.S.C. 280g-1, 701, 1381, 1396, 1397, 5106, 9801, 10401, 15001-15009

STATUTORY AUTHORITY: KRS 194A.050, 200.660(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the point of entry and service coordination provisions pertaining to First Steps, Kentucky's Early Intervention Program.

Section 1. Point of Entry. (1)(a) The point of entry (POE) staff shall serve as the local lead agency and shall coordinate child find efforts with:

1. Programs authorized under part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C 1400; and

2. Other state and federal programs serving this population.

(b) The primary referral sources described in paragraph (a) of this subsection may include:

1. Maternal and child health programs, including the Maternal,

Infant and Early Childhood Home Visiting Program, under Title V of the Social Security Act (42 U.S.C 701(a));

2. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C 1396(a)(43) and 1396(a)(4)(B));

3. Head Start, including Early Head Start programs under section 645A of the Head Start Act (42 U.S.C. 9801);

4. Supplemental Security Income (SSI) programs under Title XVI of the Social Security Act (42 U.S.C 1381);

5. Child protection and child welfare programs, including programs administered by and services provided through the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a)) and 922 KAR 1:330, Section 3(10)-(11);

6. Programs authorized through 42 U.S.C 15001 to 15009, the Developmental Disabilities Assistance and Bill of Rights Act;

7. Child care programs and early learning programs;

8. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401);

9. Early Hearing Detection and Intervention (EDHI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); 10. The Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa);[and]

11. Hospitals, including prenatal and postnatal care facilities, and physicians;

12. Parents, including parents of infants and toddlers; and

13. Homeless shelters.

(c) Primary referral sources are required to refer a child as soon as possible, but in no case more than seven (7) days, after the child has been identified as potentially eligible.

(2) Each POE shall have procedures in place that provide for accepting the referrals of a child under the age of three (3) who:

(a) Is the subject of a substantiated case of child abuse or neglect;

(b) Who has a suspected developmental delay; or

(c) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

(3) Each POE staff shall maintain accessibility and provide public awareness activities in each of their districts.

(4)[(3)] The POE staff shall maintain communication with the District Early Intervention Committee (DEIC) and the state lead agency on matters of child find, service options, and other issues relevant to the First Steps Program.

(5)[(4)] The POE staff shall accept all referrals for First Steps services to determine eligibility for programs.

(a) Upon receiving a telephone or written referral, POE staff shall determine if:

1. The family is aware that a referral is being made; and

2. The referral is appropriate based on:

a. The child's age, which shall be between birth and three (3) years old;

b. The family's residence within the assigned district or the family being homeless; and

c. An established risk diagnosis or a developmental concern.

(b) A child who is referred due to a developmental concern, and not screened by the primary referral source, shall have a cabinet approved screening protocol completed prior to the initial evaluation.

(c) If the point of entry finds the child does not meet the criteria established in paragraph (a)2. of this subsection, the POE shall provide to the referral source appropriate resources for the child and family for services that meet that child's needs. These resources may include:

1. Public schools;

2. The Department for Community Based Services;

3. Medical services;

4. Other appropriate community services; or

5. Another POE if residency alone is the reason for an inappropriate referral.

(d) If it is determined that the child meets the criteria established in paragraph (a)2. of this subsection, POE staff shall contact the family by telephone or letter within five (5) working days

of receipt of the referral to provide information about the program and obtain consent for intake.

(e) For a child referred due to an established risk condition, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(f) For a child referred due to a developmental concern that has been confirmed by administration of the cabinet approved screening protocol, if the family is interested in early intervention services, the POE staff shall assign a service coordinator and continue with the intake process.

(g) The parent or guardian of a child referred due to a developmental concern shall:

1. Be provided with prior written notice of the POE's intent to administer the cabinet approved screening protocol. The notice shall include the option to request an evaluation at any time during the screening procedure; and

2. Give written consent prior to the administration of the cabinet approved screening protocol by signing the Notice of Action and Consent for Screening, Evaluation and Assessment (FS-8).

(h) If the family is not interested in participating, the family shall be provided contact information for the POE and other community resources. The POE staff shall document in the child's record the refusal of services.

(i) If the POE staff is unable to contact the family within five (5) working days from the date of the referral, a follow-up letter shall be sent to the family and the case closed.

(j) If the POE is able to contact the family initially but the family fails to return the screening protocol or consent, the POE shall send a First Steps Notice of Action (FS-9) and close the case five (5) working days from the date of notice.

~~(6)~~(5) All children who are two (2) years and ten and one-half (10 1/2) months old to age three (3) years when first referred to First Steps shall not be eligible for First Steps. The POE shall notify the parent or guardian in writing that due to the child's age at the time of referral, the First Steps Program will not provide an evaluation to determine eligibility for First Steps, but with written consent will refer the child to the state and local education agency or other community resource.

~~(7)~~(6) The POE staff shall maintain a complete record on all children referred through the POE and provide data to the state lead agency as requested. A complete record shall include:

(a) A hard copy of all documents that include a parent signature;

(b) Any correspondence generated by the POE; and

(c) The data entered into the child's electronic early intervention record in the First Steps data management system.

~~(8)~~(7) The POE staff shall provide data as requested by the DEIC.

Section 2. Service Coordination. (1) The service coordinator shall serve as the main point of contact in helping families obtain the services and assistance they need.

(2) During the intake process, the service coordinator shall:

(a) Identify the purpose of the visit;

(b) Discuss the role of the service coordinator;

(c) Explain the First Steps service delivery system, including:

1. The consultative model and primary service provider; and

2. The First Steps system of payment, which includes:

a. The family share participation fee; and

b. The billing of public and private insurance for early intervention services;

(d) Interview the family and document findings related to:

1. The parent or guardian's developmental concern for the child; and

2. The pregnancy, birth, and health information;

(e) Explain the family rights by reviewing the Family Rights Handbook;

(f) Discuss the forty-five (45) day timeline and determine the next action needed to determine eligibility for the child;

(g) Discuss evaluation and service options;

(h) Obtain parent or guardian signature on the First Steps

Consent to Release/Obtain Information (FS-10) form for medical and developmental information;

(i) Collect insurance information and data necessary for billing and obtain parent or guardian signature on the Notice and Consent for Use of Private Insurance (FS-12A) form;~~and~~

(j) Assess the family's ability to pay using the Financial Assessment Verification (FS-13) form; and

(k) Inform the family of the transition process by:

1. Providing the Notice of Transition (FS-11); and

2. Obtaining parental consent to the transition process.

(l) Families shall be informed of the right to decline, within thirty (30) days of consent, or to revoke consent at any time, participation in the transition activities, which includes:

1. The disclosure of personally identifiable information to the Kentucky Department of Education (KDE) and the local education authority (LEA); and

2. Having a transition conference.

(3) The service coordinator shall:

(a) Assist the parents of infants and toddlers with disabilities with obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

(b) Coordinate the provision of early intervention services and other services, including educational, social, or medical services that are not provided for diagnostic or evaluative purposes, that the child needs or is being provided;

(c) Coordinate evaluations and assessments;

(d) Facilitate and participate in the development, review, and evaluation of IFSPs;

(e) Conduct referral and other activities to assist families in identifying available early intervention service providers;

(f) Coordinate, facilitate, and monitor the delivery of early intervention services to ensure that the services are provided in a timely manner;

(g) Conduct follow-up activities to determine that appropriate early intervention services are being provided;

(h) Coordinate the funding sources for service;

(i) Facilitate the development of a transition plan to preschool, school, or, if appropriate, to other services;

(j) Provide written confirmation in accordance with 34 C.F.R. 303.342(d)(2) to the parent or guardian and all IFSP team members of the date, time, and location of the meetings for the initial and annual Individual Family Service Plan (IFSP), the six (6) month review, and any other IFSP team meeting or the transition conference at least seven (7) calendar days prior to the IFSP, review, or transition conference date;

(k) If there is a cancellation of an IFSP meeting, notify the IFSP members in writing of the rescheduling of the IFSP meeting within five (5) working days of the cancelled meeting date;

(l) Reassess the family's ability to pay at the six (6) month review and annual IFSP meeting, and at other times if requested by the family; and

(m) Following the IFSP meeting:

1. Enter all IFSP data into the First Steps data management system;

2. Finalize the plan within five (5) working days of the date of the meeting;

3. Provide a written copy to the parent or guardian within five (5) working days of the meeting and provide copies to persons identified and consented to by the family; and

4. Refer the family to appropriate agencies for service identified on the IFSP in accordance with 902 KAR 30:130, Section 2(5)(i); ~~and 5. Ensure that transition steps and services are discussed with the family during each IFSP meeting.~~

(4) The service coordinator shall inform the family of the family's rights and procedural safeguards by:

(a) Summarizing the Family Rights Handbook at the initial IFSP, at each subsequent IFSP, and at any time the family requests;

(b) Familiarizing the family with the procedural safeguards at every IFSP meeting;

(c) Ensuring that all materials are given to the family in a

format the family can understand in the family's native language; and

(d) Assisting the family, at the family's request, with resolving conflicts among service providers.

(5) The service coordinator shall assist the family in identifying available service providers by:

(a) Keeping current on all available services in the district; and

(b) Having available to the families a list of all eligible First Steps services providers in each district. If the family chooses a service provider outside the First Steps approved provider list, the service coordinator shall inform the family that the provider is not approved through First Steps and may result in a cost to the family.

(6) The service coordinator shall ensure that service coordination is available to families during normal business hours and at the family's request.

(7) The service coordinator shall contact the child's family at a minimum of one (1) time per plan to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(8) ~~The service coordinator shall give the family a business address and phone number and any other information needed to contact the service coordinator.~~

(9) If a family desires a change in the family's service coordinator, the family shall contact the POE and the POE shall seek to resolve the situation.

(9) ~~(10)~~ The service coordinator shall inform the family of the [facilitate the development of a] transition process[plan] by:

(a) Reviewing the Notice of Transition (FS-11) and obtain parental consent for the transition procedures. With parental consent, the service coordinator shall:

1. Ensure[Knowing the transition procedures as established in 902 KAR 30:130, Section 3(4)(f);

(b) Ensuring] that all potential agencies and programs that could provide service to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

2. Hold[(e)-Holding] a transition conference at least ninety (90) calendar days and, at the discretion of all parties, not more than nine (9) months prior to the child's third birthday. The transition conference shall involve the family, IFSP team, the special education local school district representative, and staff from potential next placement options; and

3. Include[(d)-Including] at least one (1) transition outcome as a part of every IFSP that is consistent with 34 C.F.R. 303.344(h); and

(b) Confirming child find information was transmitted to the LEA and, with parental consent, release additional information needed by the LEA to ensure the continuity of services from the part C program to the part B program. This additional information may include:

1. The most recent evaluation and assessment of the child;

2. The most recent assessment of the family; and

3. The most recent IFSP.

(10) ~~(11)~~ The service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record in the First Steps data management system. This documentation shall occur within ten (10) calendar[five (5)] days of the date of service and include:

(a) The date of contact;

(b) Amount of time spent;

(c) Reason for contact;

(d) Type of contact whether by telephone or face-to-face;

(e) Result of contact; and

(f) Plan for further action.

(11) ~~(12)~~ The service coordinator shall document in the First Steps data management system all contacts attempted but not made.

(12) ~~(13)~~ The service coordinator shall encourage the family to access all services identified on the individualized family service plan.

(13) ~~(14)~~ If the family wants to voluntarily terminate a service or all services, the service coordinator shall:

(a) Document in the child's record which services are ending and the date of termination; and

(b) Send a follow-up letter that meets the requirements for prior

written notice as specified in 34 C.F.R. 303.421 to the family which includes what services are terminating, and the date services will terminate, within five (5) working days after notice from the family of the family's choice to end services.

(14) ~~(15)~~ If the family is absent from a scheduled service with no prior notice for two (2) consecutive visits, the service provider shall notify the service coordinator after the last absence. If the service coordinator receives notice of no show from a provider, the service coordinator shall:

(a) Document the service provider's contact and try to make contact with the family to discuss the circumstances. The service coordinator shall:

1. If contact is made, notify each provider of the result of the discussion; or

2. If unable to contact the family within five (5) working days, send the family a notice of action without consent to indicate service will be terminated within five (5) working[seven (7)] days of the date of the notice; and

(b) Notify the service provider, in writing, if services are terminated and the date of termination.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Family Rights Handbook", April 2014~~December 2010~~;

(b) "First Steps Notice of Action (FS-9)", September 2012;

(c) "First Steps Consent to Release/Obtain Information (FS-10)", April 2014~~May 2012~~;

(d) "Financial Assessment Verification (FS-13)", May 2012;~~and]~~

(e) "Notice and Consent for Use of Private Insurance (FS-12A)", May 2012;

(f) "Notice of Action and Consent for Screening, Evaluation and Assessment (FS-8)", March 2014; and

(g) "Notice of Transition (FS-11)", March 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:110:

(a) What this administrative regulation does: This administrative regulation provides guidance and requirements for the Point of Entry (POE). The Point of Entry is the local lead agency that is responsible for public awareness activities,



processing all referrals to the Kentucky Early Intervention System and is responsible for ongoing record keeping and service coordination activities.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to the POE regarding primary referral sources and the processing of referrals for early intervention services. The transition process has been expanded in regulation to comply with federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652(2-6) requires that there be an operational early intervention system. KRS 200.664 requires an individualized family service plan be developed for all eligible infants and toddlers. KRS 200.670 requires KEIS to implement public awareness activities to ensure access to early intervention services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendments to this regulation expand the requirements for the transition of children from the Part C program to the Part B program.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to fully comply with federal regulations found at 34 C.F.R. 303 and so that regulation reflects current practice and program reorganization.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and KRS 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to this regulation will provide guidance to the POE in matters related to child find or public awareness activities. Federal regulations require that all potentially eligible children be referred to the early intervention system as soon as possible. The enhanced list of those identified as a primary referral source will ensure compliance with this part of federal regulation. The changes to this regulation will also enhance the transition process and ensure that children receive a timely transition from the Part C program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including POE staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The primary referral sources, early intervention providers, including service coordinators and POE staff, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will help to identify children potentially eligible for early intervention services, and will benefit early intervention providers, including service coordinators by providing needed clarity so that they are

more effective in their roles within the system.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No continuing costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal funds and state general funds will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the 15 Point of Entry offices, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation will have an estimated \$1-2 million savings to the program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 outlines the states requirements for implementing early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.650 to 200.676 charges the Cabinet for Health and Family Services, Department for Public Health to implement early intervention services and

comply fully with federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Maternal and Child Health**  
**(Amendment)**

**902 KAR 30:120. Evaluation and eligibility.**

RELATES TO: KRS 200.654, 200.668, 211.647, 216.2970, 34 C.F.R. 303.11, 303.321, 303.322, 303.421, 20 U.S.C. 1434

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(7), 34 C.F.R. 303.321, 20 U.S.C. 1434

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the evaluation, eligibility, and redetermination of eligibility requirements for First Steps, Kentucky's Early Intervention Program.

Section 1. Initial Eligibility. (1) Initial eligibility shall be determined by the review and synthesis of:

(a) The results of [Administering] at least one (1) multi-domain evaluation instrument designed to confirm the presence of a significant developmental delay;

(b) [Gathering] Information about the child's developmental history through parent interview;

(c) [Identification of] [Identifying] the child's level of functioning in each developmental area;

(d) [Gathering] Information from other sources, such as childcare workers; and

(e) [Reviewing] All available medical and educational records.

(2) A child shall be eligible for First Steps service if the child:

(a) Is age birth up to three (3) years;

(b) Is a resident of Kentucky or homeless within the boundaries of the state at the time of referral and resides in Kentucky while receiving early intervention services; and

(c) 1. Has a documented established risk condition that has a high probability of resulting in developmental delay; or

2. Is determined to have a significant developmental delay based on the evaluation and assessment process.

(3) Eligibility by established risk conditions:

(a) In accordance with KRS 200.654(10)(b), a child meeting the criteria established in subsection (1)(a) and (b) of this section with a suspected established risk condition shall be eligible once the diagnosis is confirmed by a physician. The established risk condition shall be documented in the child's record through the First Steps on-line data management system.

(b) A list of approved established risk diagnoses shall be maintained by the First Steps Program and made available in policies and procedures [is incorporated by reference in this administrative regulation].

1. A child with an established risk shall have a five (5) area assessment, assessing the five (5) areas listed in subsection (4)(a) of this section, completed by a developmental evaluator using a cabinet-approved, criterion referenced assessment instrument in lieu of a norm-referenced evaluation, in accordance with 902 KAR 30:130.

2. If the established risk condition relates to hearing loss, the five (5) area assessment shall be:

a. performed by a speech therapist or a teacher of the deaf and hard of hearing; and

b. ~~Authorized as a discipline specific assessment~~].

(4) Eligibility by developmental delay:

(a) A child meeting the criteria established in subsection (2)(4)(a) and (b) of this section shall be eligible for First Steps services if the child is determined to have fallen significantly behind in development, based on the evaluation and assessment process, in one (1) or more of the following domains of development:

1. Total cognitive development;

2. Total communication area through speech and language development, which shall include expressive and receptive language;

3. Total physical development including motor development, vision, hearing, and general health status;

4. Total social and emotional development; or

5. Total adaptive skills development.

(b) Evidence of falling significantly behind in developmental norms shall be determined on a norm-referenced test by the child's score that is:

1. Two (2) standard deviations below the mean in one (1) skill area; or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas.

(c) 1. If a norm-referenced test reveals a delay in one (1) of the five (5) skill areas but does not meet the eligibility criteria required by paragraph (b) of this subsection, a more in-depth standardized test in that area of development may be administered if the following is evident:

a. The initial evaluator and a parent or guardian have a concern or suspect that the child's delay is greater than the testing revealed;

b. A different norm-referenced test tool reveals a standardized score which would meet eligibility criteria; and

c. There is one (1) area of development that is of concern.

2. The results of the alternate testing required by subparagraph 1. of this paragraph shall be considered as part of [determine] the child's eligibility if the standardized scores indicate a delay of at least two (2) standard deviations.

(5) Eligibility by professional judgment. A child may be determined eligible by informed clinical opinion by the following multidisciplinary evaluation teams of professionals:

(a) An approved neonatal follow-up program team, as described in 902 KAR 30:150 Section 2(3)(e);

(b) An approved intensive level evaluation team, as described in 902 KAR 30:150 Section 2(3)(d); or

(c) The designated record review team, if reviewing for eligibility.

Section 2. Initial Child Evaluation. (1) Prior to the administration of an evaluation instrument, the child's vision and hearing status shall be determined through screening or evaluation.

(2) A child referred to the First Steps Program who meets the criteria established in Section 1(2)(a) and (b) of this administrative regulation shall receive an initial evaluation [to determine eligibility] if:

(a) There is a suspected developmental delay as confirmed by the cabinet-approved screening protocol;

(b) The child does not have an established risk diagnosis; and

(c) The parent requests and consents to an evaluation.

(3) For a child without an established risk diagnosis, an initial evaluation shall be used to:

(a) [Determine eligibility; (b)] Determine developmental status; and

[b] [c)] Establish the baselines for progress monitoring; and  
~~(d) Make recommendations to the Individual Family Service Plan (IFSP) team~~].

(4) For a child with an established risk diagnosis, a criterion referenced assessment shall be completed to:

(a) Determine developmental status; and

(b) Establish the baseline for progress monitoring; and

~~(c) Make recommendations to the Individual Family Service~~

Plan (IFSP) team].

(5)(a) Initial evaluations shall include the five (5) developmental areas identified in Section 1(4)(a) of this administrative regulation using norm-referenced standardized instruments that provide a standard deviation score in the total domain for the five (5) areas and shall include a cabinet-approved criterion referenced assessment instrument, in accordance with 902 KAR 30:130.

(b) The initial evaluation shall include:

1. A medical component completed by a physician or nurse practitioner that includes a[recent] complete history and physical examination and other medical information; and

2. A developmental component completed by a cabinet-approved initial evaluator, in accordance with 902 KAR 30:150, that includes:

a. A statement of the child's health status during the evaluation, including notation of health issues that affect the results of the evaluation[review of pertinent health and medical information]; and

b. Completion of each appropriate instrument needed to determine the child's unique strengths and needs.

(c) An evaluation report shall be entered into the First Steps online data management system:

1. Within five (5) working days of the completion of the evaluation; and

2. In clear, concise language that is easily understood by the family.

(6) Child records of evaluations transferred from a developmental evaluator outside the Kentucky Early Intervention System shall be reviewed by the Point of Entry staff and shall be used for eligibility determination if:

(a) The records meet evaluation timelines established in subsection (7) of this section; and

(b) The records contain the developmental evaluation information required by subsection (5)(b) of this section.

(7) If there is a[recent medical or] developmental evaluation available, as required by subsection (5)(b) of this section, it shall be considered as part of the child's[used to determine] eligibility if the evaluation was performed within:

(a) Three (3) months prior to referral to First Steps, for a child under twelve (12) months of age; or

(b) Six (6) months prior to referral to First Steps, for a child between twelve (12) months of age and three (3) years of age.

(8)(a) A child referred to the First Steps program who was born at less than thirty-seven (37) weeks gestational age shall be evaluated and assessed using an adjusted gestational age to correct for prematurity, unless the child is twenty-four (24) months of age or older at the time of the referral.

(b) For a child who is less than six (6) months corrected age, the initial evaluation shall be done by an approved intensive level evaluation team, an approved neonatal follow-up program team, or an approved district child evaluation specialist in accordance with Section 1(5) of this administrative regulation.

(9) If the child does not have an established risk diagnosis and is determined not eligible, the POE staff shall:

(a) Provide a First Steps Notice of Action (FS-9) in accordance with 34 C.F.R. 303.421; and

(b) Discuss available community resources, such as Medicaid, EPSDT, the Department for Public Health's and the Commission for Children with Special Health Care Need's (CCSHCN's) Title V programs, and other community programs.

(10) A review of the child's First Steps record by the record review team shall be the second level in the First Steps evaluation system that shall be utilized to determine eligibility for cases which are complex or have contradictory information from testing.

(a) Upon obtaining a written consent by the parent or guardian, a service coordinator shall submit a child's record to the Department for Public Health or the designee for a record review if:

1. The child does not meet eligibility guidelines at the initial evaluation;

2. The initial evaluator and a parent or guardian have concerns that the child is developing atypically; and

3. A determination of eligibility based on professional judgment is needed.

(b) Upon receiving a referral, a record review team shall conduct a record review and issue findings within ten (10) calendar days of receipt of the request.

Section 3. Annual Redetermination of Eligibility. (1) A redetermination of eligibility shall not be used to address concerns that are medical in nature.

(2) A child shall have continuing program eligibility for First Steps services if:

(a) The child is:

1. Under three (3) years old; and

2. A resident of Kentucky or homeless within the boundaries of the state; and

(b) The result of the most recent progress review, including the annual five (5) area assessment, demonstrates:

1. A significant delay in at least one (1) or more developmental areas; and

2. Continued First Steps services are required in order to support continuing developmental progress.

(3) Based on the results of the redetermination of eligibility, the IFSP team shall:

(a) Continue with the same outcomes and services;

(b) Continue with modified outcomes and services; or

(c) Transition the child from First Steps services.

(4) Redetermination of eligibility shall occur at least annually.

(a) The annual redetermination shall be part of the child's ongoing assessment and shall include an assessment in all five (5) areas[by the Primary Service Provider (PSP)] using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130, and be completed no more than sixty (60) and no less than thirty (30) days prior to the annual IFSP date.

(b) If a person directly involved in conducting the evaluation and assessments is unable to attend an IFSP meeting, arrangements shall be made for that person's involvement by other means including participating in a telephone conference call, having a representative attend the meeting, or making records and reports available at the meeting.

Section 4. Determination of Child's Hearing Status. (1) If the referral is for a child who has a diagnosis of significant hearing loss, as specified by KRS 200.654(10)(b), the child shall be considered to have an established risk diagnosis and be eligible for First Steps services and the referral process shall continue.

(2) If the referral is for a child who is suspected of having a hearing loss, with no verification of degree of loss or diagnosis, and who is suspected of having developmental delays, the POE staff shall initiate the evaluation for First Steps, which shall include an audiological evaluation at an approved Infant Audiological Assessment and Diagnostic Center as specified by KRS 211.647 and 216.2970.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "First Steps Notice of Action (FS-9)", October 2012 edition; and

(b) "First Steps[;] Established Risk Condition list", January 2014[Conditions], December 2010].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of

intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:120:

(a) What this administrative regulation does: This administrative regulation provides requirements to establish a child's initial eligibility and the annual redetermination of eligibility for the Kentucky Early Intervention System. The requirements for child evaluation are included in this regulation.

(b) The necessity of this administrative regulation: States must establish the specific detail for eligibility to receive early intervention services. While federal statute and regulation describe the mandatory populations of infants and toddlers to be served under Part C of the Individuals with Disabilities Education Improvement Act (PL 108-446), states set the specific procedures and criteria for eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650-200.676 requires the state to develop and implement a comprehensive, statewide early intervention system that complies with federal statute and regulation. KRS 200.652 (2) specifically requires the state to provide assistance and support to the family of an infant or toddler with a disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will ensure that children who are eligible for early intervention service are appropriately identified. It also provides for the requirement for continued eligibility for early intervention services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides specific guidance for the eligibility determination process, including the evaluation and assessment of the child. The listing of eligible medical conditions is updated.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reduce costs for unnecessary evaluations and assessments and to specify procedures for federal requirements for reporting the entry and exit status of all children served by Part C of Pub.L. 108-446 (Federal requirement is found at 34 C.F.R. 303.721).

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.650(6) and KRS 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statute: The changes to the eligibility determination process will allow the state regulations to align with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 200 intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately \$40 million. The revisions to this administrative regulation will not cost the affected entities any additional dollars. Changes to evaluation and assessment represent an elimination of unnecessary and duplicative testing, resulting in efficiencies to the system as a whole.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinator by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal funds (twelve (12) percent) and eighty-eight (88) percent state general funds will be used to implement this administrative regulation. No state match is required.

(7) Provide an assessment of whether an increase in fees of funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1434, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative

regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.310 through 303.322 outlines the states responsibilities in indentifying, evaluating and assessing children potentially eligible to receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards.KRS 200.650 charges the Cabinet for Health and Family Services, Department for Public Health to comply with all federal statutes and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to differentiate the process for initial eligibility (and the redetermination of eligibility Kentucky has streamlined the evaluation and assessment process.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Public Health

##### Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:130. Assessment, service planning, and assistive technology.

RELATES TO: KRS 200.660(6), 200.664, 34 C.F.R. 303.321, 303.340-303.346, 20 U.S.C. 1435, 1436, 1437

STATUTORY AUTHORITY: KRS 194A.030(7), 194A.050, 200.660(8), 20 U.S.C. 1436

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the requirements for assessment, the Individualized Family Service Plans used in First Steps, and assistive technology.

Section 1. Child Assessment. (1) Assessment shall be an on-going procedure used by personnel meeting the qualifications established in 902 KAR 30:150, Section (2)(a)-(p), throughout the child's period of eligibility for First Steps. An assessment shall reflect:

(a) The child's unique strengths and needs; and

(b) The services appropriate to meet those needs.

(2) All evaluations and assessments of the child and family shall be conducted in a nondiscriminatory manner and selected and administered so as not to be racially or culturally discriminatory.

(3) Unless clearly not feasible to do so, all assessments of a child shall be conducted in the native language of the child.

(4) Assessments shall reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program.

(a) Assessment methods shall include direct assessment and at least one (1) of the following:

1. Observations;

2. Interview and parent reports; or

3. Behavioral checklist and inventories.

(b) Direct assessment shall include one (1) or more instruments that are:

1. Appropriate for an infant or toddler and allow for adaptations for a disability as needed; and

2. Criterion-referenced, which compares the child's level of development with skills listed in a chronological sequence of typical development.

(5) If, after the initial evaluation and assessments are completed, the IFSP team determines that a subsequent assessment is warranted, the following shall be documented on the IFSP:

(a) The IFSP team's reasons for an additional assessment;

(b) Whether a current provider on the IFSP team can assess the area or areas of concern; and

(c) Circumstances relating to the child's ability or the family's capacity to address the child's developmental needs that warrant the subsequent assessment.

(6) POE staff shall obtain a physician's or advanced practice registered nurse's (APRN's) written approval in order to complete an assessment on a child deemed medically fragile. The approval shall be specific as to the modifications needed to accommodate the child's medical status.

(7) A formal, direct assessment shall include a written report if performed for initial assessment, the annual assessment, or exit assessment, or if authorized by the IFSP. This report shall include:

(a) A description of the assessment instruments used in accordance with subsection (4)(b) of this section;

(b) A description of the assessment activities in accordance with subsection (4)(a) of this section~~and the information obtained, including information gathered from the family~~;

(c) Identifying information, including:

1. The child's First Steps identification number;

2. The name of the child;

3. The child's age at the date of the assessment;

4. The name of the service provider and discipline;

5. The date of the assessment;

6. The setting of the assessment;

7. The state of health of the child during the assessment including a statement of the child's vision and hearing status;

8. The parent's assessment of the child's performance in comparison to abilities demonstrated by the child in more familiar circumstances;

9. The medical diagnosis if the child has an established risk condition;

10. Who was present for the assessment; and

(d) A profile of the child's level of performance, in a narrative form which shall indicate the:

1.~~[Concerns and priorities; 2.]~~ Child's unique strengths and needs~~[- and preferences];~~

2.~~[3.]~~ Skills achieved since the last report, if applicable; and

3.~~[4.]~~ Current and emerging skills, including skills performed independently and with assistance~~[- and 5. Recommended direction for future service delivery].~~

(8) Item level data from the cabinet-approved criterion referenced assessment protocol, in accordance with 902 KAR 30:130, shall be submitted electronically to the Kentucky Early Childhood Data System within five (5) working days of the completion of the assessment.

(9) (a) The initial or other formal assessments, with written reports, shall be completed and recorded in the child's record using the First Steps data management system within five (5) working days of the provider completing the assessment.

(b) The provider who performed the assessment shall:

1. Write the report in family-appropriate language that the child's family can easily understand;

2. Provide the written report to the family within the time frame established in paragraph (a) of this subsection; and

3. Document in the child's record the date the report was mailed to the family~~Verbally share the assessment report with the family and shall document the contact in the assessor's notes;~~

2. Provide the written report to the family within the time frame established in paragraph (a) of this subsection; and

3. Write the report in family-appropriate language that the child's family can easily understand~~].~~

(c) If the time frame established in paragraph (a) of this subsection is not met due to illness of the child or a request by the parent, the assessor shall document the reason for the delay~~[circumstances in staff notes with supportive documentation made] in the child's record~~~~[by the service coordinator].~~

(10)(a) An assessment provided as a general practice of a discipline, not due to the child or family's needs, shall be authorized as an~~considered~~ early intervention service, not as an assessment.

(b) Ongoing assessment shall ensure that the IFSP and services are flexible and accessible.

(11) Five (5) working days prior to either the annual or six (6) month review of the IFSP or the expiration date of the IFSP, a service provider shall complete progress reports in the online data management system and provide a copy to the family.

(12)(a) Within thirty (30) days prior to exiting the First Steps program at age three (3), each child shall receive an assessment in all five (5) developmental domains~~[by the Primary Service Provider (PSP)]~~ using a cabinet-approved criterion referenced instrument, in accordance with 902 KAR 30:130.

(b) The assessment used for annual redetermination of eligibility may be used to meet the assessment required by paragraph (a) of this subsection if it is completed within ninety (90) days prior to the child's exit from the First Steps Program.

Section 2. Family Assessment. (1) The family assessment shall be conducted with the family of a child eligible for early intervention services to identify the family's resources, priorities, and concerns for their child.

(2) The identification of the family's resources, priorities, and concerns shall be:

(a) Voluntary on the part of the family;

(b) Family directed;

(c) Based on information provided by the family through an assessment tool and personal interview with those members who elect to participate in the assessment; and

(d) Used to determine the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible child.

(3) Unless clearly not feasible to do so, the family assessment shall be conducted in the native language of the family members being assessed.

(4) POE staff shall provide a written report of the family assessment to the family within five (5) working days of the parent interview.

(5) The family assessment report shall contain recommendations that address the family's priorities as well as the child's holistic needs based on the review of pertinent medical, social, and developmental information.

(6) The family assessment shall be updated prior to the six (6) month IFSP meeting and shall be re-administered prior to the annual IFSP meeting.

Section 3. Individualized Family Service Plan (IFSP). (1) For a child who has been evaluated for the first time and determined eligible in accordance with 902 KAR 30:120, a meeting to develop the initial IFSP shall be conducted within forty-five (45) days after the point of entry receives the referral.

(2) The IFSP shall be reviewed by convening a meeting at least every six (6) months. An IFSP team meeting shall be convened more frequently if:

(a) A periodic IFSP review meeting is requested by:

1. The family; or

2. The family and a team member; or

(b) An early intervention service is added or increased.

(3) The purpose of the periodic review shall be to determine:

(a) The degree to which progress toward achieving the results or outcome identified in the IFSP is being made; and

(b) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

(4) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(5) A face to face meeting shall be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family.

(6) IFSP meetings shall be conducted:

(a) In settings and at times that are convenient for the family; and

(b) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(7) The contents of the IFSP shall be fully explained to the parent and informed written consent obtained prior to the provision of early intervention services described in the IFSP. The signed IFSP shall be a contract between the family and service providers. A service included on the IFSP shall be provided as authorized, unless the family chooses not to receive the service and this choice is documented in the child's record.

(8) Each initial meeting and each annual IFSP team meeting to evaluate the IFSP shall include the following participants:

(a) The parent or parents of the child;

(b) Other family members, as requested by the parent, if feasible to do so;

(c) An advocate or person outside the family, if the parent requests that the person participate;

(d) The service coordinator who is responsible for implementing the IFSP;

(e) The person directly involved in conducting the evaluation and assessment of the child; and

(f) As appropriate, the provider who will be providing early intervention service to the child and family.

(9) If the person identified in subsection (8)(e) of this section is unable to attend a meeting, arrangements shall be made for that person's participation through other means, including one (1) of the following:

(a) Participating in a telephone conference call;

(b) Having a knowledgeable representative attend the meeting;

or

(c) Making pertinent records available at the meeting.

(10)[(4)] The IFSP shall include:

(a) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes fine and gross motor skills, vision, hearing, and general health status;

2. Cognitive development that includes skills related to the child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings, including receptive and expressive communication and communication with peers and adults;

4. Social and emotional development that includes skills related to the ability of the child to successfully and appropriately select and carry out their interpersonal goals; and

5. Adaptive development that includes self-help skills and the ability of the child's sensory systems to integrate successfully for independent functions;

(b) Performance levels to determine strengths which can be used to enhance functional skills in daily routines when planning instructional strategies to teach skills;

(c) A description of:

1. Underlying factors that may affect the child's development including the established risk condition; and

2. What motivates the child, as determined on the basis of observation in natural settings, during child interaction, and through parent report;

(d) With concurrence of the family, a statement of the family's

resources, priorities, and concerns related to enhancing the development of the child;

(e)1. A statement of the measurable results or measurable outcomes expected to be achieved for the child, including pre-literacy and language skills as developmentally appropriate for the child, which shall:

- a. Be functionally stated;
- b. Be representative of the family's own priorities;
- c. Fit naturally into the family's routines or schedules;
- d. Reflect the use of the family's own resources and social support network; and
- e. Be flexible to meet the child and family's needs in current and possible future environments;

2. The criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made; and

3. A statement indicating whether modifications or revision of the outcomes or services are necessary;

(f) At least one (1) measurable transition outcome that addresses any upcoming changes relevant to the child and family or, if the child is two (2) years or older, the steps and services to be taken to support a smooth[addresses] transition of the child to preschool or other appropriate[related] services, and includes:

1. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition~~[A description of types of information the family might need to assist in preparing for the upcoming changes and in relation to future placements];~~

2. Activities to be used to help prepare the child for changes in the service delivery;

3. Specific steps that will help the child adjust to and function in the new setting or activity; and

4. Identification of transition service and other activities the IFSP team determines are necessary to support the transition of the child~~[A description of information that will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement];~~

(g) The statement of the specific early intervention services, based on peer-reviewed research to the extent practicable, that are necessary to meet the unique needs of the child and family to achieve the results or outcomes and which:

1. Are stated in length, frequency, intensity, duration, location and method of delivering services; and

2. Include payment arrangements;

(h)1. A description of the natural environment, which includes natural settings and service delivery systems, in which the early intervention service is to be provided;

2. How the skills shall be transferred to a caregiver so that the caregiver can incorporate the strategies and activities into the child's natural environment;

3. How the child's services may be integrated into a setting in which other children without disabilities participate; and

4. If the service cannot be provided in a natural environment, the reason, including:

a. Why the early intervention service cannot be achieved satisfactorily in a natural environment;

b. How the service is supported by the peer reviewed research;

c. How the service provided in this location or using this approach will support the child's ability to function in his or her natural environment; and

d. A timeline as to when the service might be expected to be delivered in a natural environment approach;

(i) The dates for initiation of the services and the anticipated duration of those services;

(j)1. Other services that the child needs that are not early intervention services, such as medical services or housing for the family; and

2. Identification of the funding sources and providers to be used for those services or the steps that will be taken to secure those services through public or private resources;

(k) The name of:

1. The service coordinator representing the child's or family's

needs who shall be responsible for the implementation of the IFSP and coordination with other agencies and person in accordance with 902 KAR 30:110, Section 2; and

2. The primary service provider;

(l) A review of the Family Rights Handbook; and

(m) A statement signed by the parent that complies with KRS 200.664(6).

(11)[(5)] The IFSP shall be finalized within five (5) working days of the meeting.

(12)[(6)](a) An authorized IFSP shall be valid for a period not to exceed six (6) months. An amendment that is made to the IFSP shall be valid for the remaining period of the plan.

(b) A parent or guardian's signature on the IFSP shall constitute written consent for early intervention services.

(13)[(7)] In the development and implementation of the IFSP, IFSP team members shall:

(a) Provide a family-centered approach to early intervention;

(b) Honor the racial, ethnic, cultural, and socioeconomic diversity of families;

(c) Show respect for and acceptance of the diversity of family-centered early intervention;

(d) Allow families to choose the level and nature of their involvement in early intervention services;

(e) Facilitate and promote family and professional collaboration and partnerships, which are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) Plan and implement the IFSP using a team approach;

(g) Reexamine their traditional roles and practices and develop new practices as appropriate that promote mutual respect and partnerships which may include a transdisciplinary approach;

(h) Determine the settings for service delivery based on the child's results or outcomes that are identified by the team; and

(i) Ensure that families have access and knowledge of services that shall:

1. Be provided in as normal a fashion and environment as possible;

2. Promote the integration of the child and family within the community;

3. Be embedded in the family's normal routines and activities; and

4. Be conducted in the family's natural environment, if possible, and in a way that services promote integration into a community setting which includes children without disabilities.

(14)[(8)] If an agency or professional not participating on the IFSP team but active in the child's life makes a recommendation for an early intervention service, it shall not be provided as a First Steps service unless:

(a) The IFSP team:

1. Considers the recommendation;

2. Determines that it relates to a chosen outcome or result, and family priority; and

3. Agrees that it is a necessary service; and

(b) The service is not covered by another payor source.

Section 4. Assistive Technology. (1) To access assistive technology services and devices, the child shall:

(a) Be eligible for First Steps; and

(b) Have the need for and use of assistive technology devices and services documented in the IFSP.

(2) Prior to submitting a request for purchase of an assistive technology device, the service coordinator shall attempt to obtain funding from at least two (2) sources outside the First Steps and Medicaid systems.

(3) The First Steps assistive technology review team shall review:

(a) Each equipment request for which the purchase price exceeds \$100; or

(b) A request submitted by the service coordinator, other POE staff, or state lead agency staff.

(4) A request shall be processed within ten (10) working days of the receipt of required information. The required information shall include:

(a) A current IFSP;

(b) Assessments with recommendations;  
(c) Justification statement for each device based on needs, including documentation of attempts to find alternative funding sources;

(d) Information regarding the equipment or device request, including information regarding the training of the family on the use of equipment; and

(e) Documentation of safety and approved uses in the birth to three (3) age population.

(5) The decision made through the review process may be appealed to the Part C Coordinator who shall:

(a) Consult with the monitoring assistive technology review team; and

(b) Issue the final decision.

(6) If the IFSP team is not in agreement with the decision of the Part C Coordinator:

(a) The child's IFSP team shall reconvene for an IFSP meeting with a representative from the assistive technology review team and a representative of the state lead agency; and

(b) If the IFSP team concludes at that IFSP meeting that the assistive technology device is still needed, payment for the device shall be authorized for the duration of the current IFSP.

(7) A request for purchase shall be made no later than ninety (90) days prior to the child's third birthday.

(8) Assistive technology devices purchased solely through First Steps funding shall be the property of the program. At the time the child exits the program, the family shall:

(a) Return the item to the POE office for the district where the child resides; or

(b) Purchase the item from the program at a depreciated cost.

(9) Assistive technology devices may be rented through a contracted assistive technology provider to:

(a) Determine the appropriateness of the requested item prior to purchase;

(b) Assist the child in achieving the IFSP outcomes or results; or

(c) Address short term needs of the child while awaiting receipt of a purchased device.

(10) The payment for assistive technology devices shall be made in accordance with 902 KAR 30:200 Section 2(5)(a) and (b).

(11) Items that cannot be returned for sanitary reasons, such as adapted utensils, shall not be rented.

Section 5. Incorporation by Reference. (1) "Individualized Family Service Plan", September 2012, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:130:

(a) What this administrative regulation does: This administrative regulation outlines the requirements for assessment, service planning through the development of an individualized family service plan and assistive technology within the Kentucky Early Intervention System.

(b) The necessity of this administrative regulation: This regulation is necessary to provide guidance to service coordinators, initial evaluation providers, intensive level evaluation teams and other service providers on child assessments, service planning and assistive technology. Assessment is a service that all children in the Kentucky Early Intervention System receive and provides the foundational information to develop service plans. This regulation outlines the IFSP development process and also lists the requirement for assistive technology service and devices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal statute and regulations. KRS 200.664 outlines the legal requirements for the development of an individualized family service plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation enhances the participation requirements for the development of the IFSP. It provides guidance on how and when the IFSP meetings shall occur and aligns the transition outcome requirements to the federal regulations.

(b) The necessity of the amendment to this administrative regulation: Language consistent with applicable federal regulations and statute is added to ensure compliance with federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) and KRS 200.652(3) require a statewide system, comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: The changes to the requirements for the IFSP will bring IFSPs into alignment with federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The early intervention providers, including service coordinators, will need to learn and implement the amended regulations. Families currently receiving early intervention services will need to understand how the system operates so that they are informed consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be associated with the amendment to this administrative regulation.

(c) As a result of the compliance, what benefits will accrue to



the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system. Families will benefit by not undergoing unnecessary and duplicative testing and will be more informed consumers of the public services. This increased knowledge of the early intervention system may lead to increased supports and progress for their children.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 1436, 1437, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during the subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Changes to this administrative regulation will save an estimated \$10,000 per year by reducing the number of unnecessary plan revisions and duplicate service assessments.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the states responsibilities in the development and implementation of the Individual Family Service Plan. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health with the development of the IFSP for eligible children.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with the federal statutes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:150. Personnel qualifications.

RELATES TO: KRS 200.650-200.676, 34 C.F.R. 303.31, 303.119, 303.121, 20 U.S.C. 1435(8), (9)

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provider qualifications for participation in First Steps, Kentucky's Early Intervention Program.

Section 1. Enrollment Process for Provider Participation. (1) The program shall enroll providers to carry out the early intervention services according to the provisions of KRS 200.650 to 200.676.

(2) The program shall contract only with an individual or agency who meets the qualifications established in Section 2 of this administrative regulation.

(3) The program shall reserve the right to contract or not contract with any potential provider or agency.

(4) Any provider or agency that wishes to participate as a provider in the First Steps program shall submit an application packet to the cabinet.

(a) The application packet for the individual provider shall include:

1. A copy of the provider's professional license, registration, or certificate; and

2. The Individual Provider Application (RF 6A(I)).

(b) The application packet for the agency shall include:

1. A copy of each provider's professional license, registration, or certificate; and

2. The Agency Application (RF 6A(A)).

(c) All potential providers shall:

1. Have a background check performed by the Administrative Office of the Courts, the Division of Protection and Permanency, and the Sex Offender Registry, with those agencies submitting the results of each background check directly to the cabinet;

2. Agree to provide service within the individual's or agency's scope of practice and in accordance with state and federal regulations and laws relating to First Steps; and

3. Be enrolled as a participating provider prior to being eligible to receive reimbursement in accordance with federal and state laws.

(5) The application shall not be considered complete and shall

not be processed until all information and any subsequent documentation requested by the program is provided.

(6) Upon receipt of an approved application packet, the applicant shall be notified of their eligibility to complete orientation training.~~The program shall make an enrollment determination within ninety (90) calendar days of receipt of the information required by subsections (4) and (5) of this section.~~

(7) After successful completion of orientation training~~[If the applicant is approved for enrollment]~~, the Service Provider Agreement shall be executed and the provider shall be issued a contract number that shall be used by the provider solely for identification purposes.

(8) A provider's participation shall begin and end on the dates specified in the executed Service Provider Agreement.

(9) If an agency is the enrolled provider, the agency shall be responsible for ensuring that all staff from that agency providing First Steps services meet the First Steps personnel qualifications.

(10) Provider enrollment shall be renewed every even-numbered year.

(a) An individual~~[or agency]~~ wishing to renew the Service Provider Agreement shall submit:

1. The Individual Provider Application (Renewal) (RF 6B);
2. A copy of their current licensure for their discipline;
3. A signed Service Provider Agreement;
4. A notarized Multi-provider affidavit;
5. A signed First Steps Provider Code of Ethical Conduct;
6. A completed First Steps Record of Provider Signature (RF-23);
7. A Service Catchment Area;
8. A copy of current professional liability insurance;
9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);
10. Request for Taxpayer Identification Number and Certification (W-9); and
11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement.

(b) An agency wishing to renew the Service Provider Agreement shall submit:

1. The Agency Application (Renewal) (RF 6B(A));
2. A copy of the current licensure for all service providers listed on the agency application;
3. A Service Provider Agreement signed by the agency administrator;
4. A notarized Multi-provider affidavit;
5. A signed First Steps Provider Code of Ethical Conduct for all service providers listed on the agency application;
6. A completed First Steps Record of Provider Signature (RF-23) for all service providers listed on the agency application;
7. A Service Catchment Area for all service providers listed on the agency application;
8. A copy of current professional liability insurance for the agency;
9. Authorization for Electronic Deposit of Vendor Payment (Form SAS63);
10. Request for Taxpayer Identification Number and Certification (W-9); and
11. Documentation of completion of required trainings as outlined in the expiring Service Provider Agreement for all agency staff listed on the service provider agreement~~[the documentation required by subsections (4) and (5) of this section prior to the end date specified in the Service Provider Agreement]~~.

(11) If a provider agency is enrolling to provide group services, the agency shall submit:

- (a) A copy of a valid child care licensure that meets the requirements stated in 922 KAR 2:090; or
- (b) Approval as a contractor for group instruction through the Kentucky Department of Education.

Section 2. Personnel Qualifications. (1) Minimum qualifications for professionals or disciplines providing services in First Steps shall be as established in this subsection.

(a) An audiologist shall have:

1. A master's degree; and

2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.

(b) A licensed marriage and family therapist shall have:

1. A master's degree; and
2. A license from the Kentucky Board of Licensure of Marriage and Family Therapists.

(c) A developmental interventionist shall have:

1. A bachelor's degree; and
2. An interdisciplinary early childhood education (IECE) certificate,~~[by the Kentucky Education Professional Standards Board, Division of Certification, or be able to obtain]~~ a probationary or emergency IECE certificate, or a valid statement of eligibility for IECE certification issued by the Kentucky Educational Professional Standards Board, Division of Certification.

(d) A nurse shall have:

1. An associate degree or diploma from a registered program; and
2. A license from the Kentucky Board of Nursing.

(e) A dietitian shall have:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Licensure and Certification for Dietitians and Nutritionists.

(f) An occupational therapist shall have:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(g) An orientation and mobility (O and M) specialist shall have a bachelor's degree in Special Education with emphasis on visual impairment and O and M, in accordance with the Division of Exceptional Children Services, Kentucky Department of Education.

(h) A physician shall have:

1. A doctor of medicine degree or doctor of osteopathy degree; and
2. A license from the Kentucky Board of Medical Licensure.

(i) A physical therapist shall have:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Physical Therapy.

(j) A licensed psychologist shall have:

1. A doctoral degree; and
2. A license from the Kentucky Board of Examiners of Psychology.

(k) A certified psychologist with autonomous functioning, a licensed psychological practitioner, a certified psychologist or licensed psychological associate shall have:

1. A master's degree; and
2. A license or a certificate from the Kentucky Board of Examiners of Psychology.

3. A licensed psychological associate shall be under the supervision of an actively enrolled First Steps psychologist.

(l) A social worker shall have:

1. A bachelor's degree; and
2. A license from the Kentucky Board of Social Work.

(m) A speech-language pathologist shall have:

1. A master's degree; and
- 2.a. A license from the Kentucky Board of Speech-Language Pathology and Audiology; or

b. An interim~~[A temporary]~~ license from the Kentucky Board of Speech-Language Pathology and Audiology and be under the supervision of a currently enrolled First Steps speech-language pathologist.

(n) A teacher of children who are deaf and hard of hearing shall have:

1. A bachelor's degree; and
2. A certificate for teaching the hearing impaired, or a certificate for teaching the hearing impaired with sign language proficiency, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(o) A teacher of the visually impaired shall have:

1. A bachelor's degree; and
2. A certificate for teaching the visually impaired, grades P-12, issued by the Kentucky Education Professional Standards Board, Division of Certification.

(p) A licensed professional clinical counselor shall have:

1. A master's degree; and
2. A license from the Kentucky Board of Licensed Professional Counselors.

(q) An optometrist shall have:

1. A degree from an accredited school or college of optometry; and
2. A license from the Kentucky Board of Optometric Examiners.

(r) An ophthalmologist shall have:

1. A doctor of medicine degree or doctor of osteopathy degree;
2. A license from the Kentucky Board of Medical Licensure; and

3. Certification from the American Board of Ophthalmology.

(2) The minimum qualification for paraprofessionals providing services in First Steps shall be as established in this subsection.

(a) An occupational therapy assistant shall have:

1. An associate's degree in occupational therapy; and
2. A license from the Kentucky Board of Licensure for Occupational Therapy.

(b) A physical therapist's assistant shall have:

1. An associate degree in physical therapy assistance; and
2. A license from the Kentucky Board of Physical Therapy.

(c) Paraprofessionals shall be under the supervision of a currently enrolled First Steps provider of that discipline as required by the professionals licensing board practice act.

(3) The minimum qualifications for recognized service positions providing services in First Steps shall be as established in this subsection.

(a) A Point of Entry manager shall:

1. Be employed by the Point of Entry;

2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(b), (c), (d), (f), (i), (j), (l), (m), or (p) of this section; and

3. Have four (4) years of professional experience in an early childhood education capacity or community health agency that serves families with children birth through five (5) years of age in a position in which the following skills and competencies have been demonstrated:

a. Strong interpersonal communication skills, both written and verbal;

b. Ability to create and maintain accurate reports;

c. Ability to handle multiple tasks concurrently, meet deadlines, work independently, and exercise good judgment; and

d. Establish collaboration and leadership while working with families and service providers; and

4. Two (2) years of the experience shall demonstrate progressive responsibility in a supervisory or management capacity in a community or public health organization.

(b) A service coordinator shall:

1. Be employed by the Point of Entry;
2. Meet the minimum highest entry-level requirement for one (1) of the professions identified in subsection (1)(a)-(r) of this section; or

3. Have a bachelor's degree and the equivalency of two (2) ~~years~~[years-of] experience in working with young children ages birth through five (5) years, or have a bachelor's degree and two (2) ~~years~~[years-of] experience working with families with young children ages birth through five (5) years, in a position in which the following skills and competencies have been demonstrated:

a. Communication skills in interviewing, negotiating and mediating, and providing informal support;

b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;

c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and

d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.

(c)(b) A District Child Evaluation Specialist shall:

1. Be employed by the Point of Entry to conduct screening,

evaluations and assessments, and provide consultation to service coordinators and primary level evaluators;

2. Meet the minimum highest entry-level requirements for one (1) of the professions identified in subsection (1)(a)-(r) of this section;

3. Have two (2) ~~years~~[years-of] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

4. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

5. Be approved by the cabinet in accordance with KRS 200.666(1).

(d)(e) An initial evaluator shall:

1. Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;

2. Have two (2) ~~years~~[years-of] experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development;

3. Have one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice; and

4. Be approved by the cabinet in accordance with KRS 200.666(1).

(e)(d) An intensive level evaluation team shall be approved by the Part C Coordinator and shall include:

1. a. A board certified medical professional with expertise in early childhood development;

b. A board certified developmental pediatrician;

c. A pediatrician who has training and experience in the area of early childhood development;

d. A board certified pediatric psychiatrist; or

e. A board certified pediatric neurologist; and

2. One (1) or more developmental professionals identified in subsection (1)(a)-(r) of this section.

(f)(e) An approved neonatal follow-up program team shall be a university-based program that has:

1. Submitted to the cabinet the credentials and documentation of experience in conducting assessments for the birth to three (3) age population for each proposed team member; and

2. Contracted with the cabinet to conduct neuro-developmental follow-up of high risk infants.

(g)(f) An assistive technology specialists shall:

1.a.(i) Meet the minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and

(ii) Have extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or

b.(i) Meet the qualifications established in clause a.(ii) of this paragraph; and

(ii) Be employed by an agency that currently provides assistive technology service in First Steps; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

(h)(g) To be an approved assistive technology review team, an assistive technology center shall:

1. Submit to the cabinet the credentials and documentation of experience in providing services to the birth to three (3) age population for each proposed team member; and

2. Contract with the cabinet to conduct reviews of requests for assistive technology devices in accordance with 902 KAR 30:130, Section 4.

(i)(h) A respite provider shall:

1. Meet all license, administrative regulations, and other requirements applicable to the setting in which respite is provided; and

2. Be approved by the individualized family service planning team.

(j)(i) A sign language and cued language specialist shall:

1. Meet the qualifications established in 201 KAR 39:030,

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Section 1(3)(c)[3-(1)(a), (b), (c), (e), (m) or (2)(a), (b), (c)]; and

2. Be approved by the cabinet in accordance with KRS 200.666(1).

Section 3. Field Experiences - Intervention services implemented by a student. (1) With family consent, a student may provide early intervention services under the direct one-to-one supervision of a provider qualified in accordance with Sections 1 and 2 of this administrative regulation.

(2) A student who provides early intervention services shall complete and sign staff notes for each session in which the student facilitates or provides intervention.

(3) The approved First Steps provider shall also include a staff note for each session involving a student.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 6A(I), Individual Provider Application (New)", October 2013[2012] edition;

(b) "Form 6A(A) Agency Application (New)", October 2013[2012] edition;

(c) "Form 6B(I) Individual Provider Application (Renewal)", November 2013[January 2012] edition;

(d) "Form 6B(A) Agency Application (Renewal)", November 2013[January 2012] edition;

(e) "First Steps Provider Code of Ethical Conduct", October 2013[January 2012] edition;[and]

(f) "Form 5A, Service Provider Agreement FY 2014-2016", November 2013[January 2012] edition;

(g) "Multi-provider affidavit";

(h) "First Steps Record of Provider Signature (RF-23)", August 2008 edition;

(i) "Service Catchment Area (RF 6 Attachment)";

(j) "Authorization for Electronic Deposit of Vendor Payment (Form SAS63)", July 2006 edition; and

(k) "Request for Taxpayer Identification Number and Certification (W-9)", January 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:150:

(a) What this administration regulation does: This regulation

outlines the process for provider enrollment with the Kentucky Early Intervention System program and defines the minimum qualifications for the professionals or disciplines that provide early intervention services.

(b) The necessity of this administrative regulation: 902 KAR 30:150 is necessary to define the professionals or disciplines that may provide early intervention services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.650(6) requires the cabinet to comply with federal law as it pertains to services for infants and toddlers with disabilities and their families. KRS 200.666 requires the cabinet to monitor personnel standards for providers wishing to contract with Kentucky Early Intervention System.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment to this regulation allows for a developmental interventionist to enroll with a statement of eligibility for full certification. The regulation reference for sign and cued speech professional has been corrected. The qualifications for a teacher of the deaf and hard of hearing have been expanded to include sign language proficiency. The amendment also clarifies that a paraprofessional must work under the supervision of an actively enrolled First Steps provider of that discipline. The amendment also list out the required paperwork to renew the Service Provider Agreement, thus eliminating any delay due to missing or incomplete paperwork during the contract renewal period.

(b) The necessity of the amendment to this administrative regulation: The changes to this administrative regulation are necessary to ensure the contracted providers meet the minimum qualifications for enrollment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650(6) requires that the state be in compliance with federal law and KRS 200.652(3) requires a statewide system of early intervention services. The amendments to the administrative regulations accomplish these two requirements.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice. Paraprofessionals wishing to enroll as a First Steps provider must receive supervision by an actively enrolled provider of that discipline. Individuals or agencies wishing to renew the service provider agreement will be required to submit a complete application packet as described in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3):

Individuals who meet the early intervention provider qualifications are eligible to enroll as a provider for and be paid by the First Steps

system.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. Chapter 33, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.652 and 200.666

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.118 through 303.119 outline the requirements for a comprehensive system of personnel development (CSPD) and personnel standards. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.666 charges the Cabinet for Health and Family Services, Department for Public

Health to monitor personnel standards for service providers to ensure the qualified service providers necessary to carry out the provisions of KRS 200.650 to 200.676 are appropriately and adequately prepared and trained in order to comply with the requirements of federal law and regulations.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is ensuring that all those interested in becoming early intervention providers and service coordinators meet the highest level of qualifications for their contracted discipline.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

#### 902 KAR 30:160. Covered services.

RELATES TO: KRS 200.656, 34 C.F.R. 303.13, 303.421(c), 20 U.S.C. 1435,

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes the provisions of covered services under First Steps, Kentucky's Early Intervention Program.

Section 1. Covered Services. (1) Services shall be covered if the services are included and authorized through parent signature on the Individualized Family Service Plan (IFSP) developed by an IFSP team which shall include, at a minimum, the family and two (2):

(a) Professionals as identified in 902 KAR 30:150, Section 2(1);

(b) Paraprofessionals as identified in 902 KAR 30:150, Section 2(2); or

(c) Service positions as identified in 902 KAR 30:150, Section 2(3).

(2) Services covered shall include:

(a) Service coordination as provided in accordance with 902 KAR 30:110, Section 3, and this paragraph:

1. A child shall have only one (1) designated service coordinator at a given time;

2. Service coordination shall be provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(b)(4); and

3. Service coordination shall be provided under the limitations of 902 KAR 30:200, Sections 2(3)(b)-(d)(2)(a) and 2(3)(b);

(b) Initial evaluation as provided in accordance with 902 KAR 30:120 and this paragraph. Initial evaluation shall be:

1. Considered the first level of a two (2) tier system of evaluation; and

2. Provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(c) and (d);

(c) Intensive team evaluation as provided in accordance with 902 KAR 30:120, Section 1(4) and (5)(b), and this paragraph. Intensive team evaluation shall be:

1. Considered the second level of a two (2) tier system of evaluation; and

2. Provided by qualified professionals in accordance with 902 KAR 30:150, Section 2(3)(e)(30:120, Section 2(9));

(d) Assessment of the child as provided in accordance with

902 KAR 30:130, Section 1, and 902 KAR 30:200, Section 3(1);

(e) Early intervention.

1. Early intervention shall be provided in accordance with 34 C.F.R. 303.13(a) through and (b).

2. Except as provided in subparagraph 3. of this paragraph, early intervention, which is face-to-face intervention with the child and caregivers within the context of the environment, shall include four (4) types of service:

a. Individual home or community service which shall include intervention provided by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers or family day care homes) under the limitations of 902 KAR 30:200, Section 3(2);

b. Individual office or center-based service which shall include intervention provided by First Steps qualified professionals to an eligible child at the professional's office or center site under the limitations of 902 KAR 30:200, Section 3(2);

c. Group intervention which shall include the provision of early intervention services by First Steps qualified personnel in a group, with two (2) or more eligible children, at an early intervention professional's site, office, center, or other community-based setting where children under three (3) years of age are typically found.

(i) The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained.

(ii) Group intervention shall be provided under the limitations of 902 KAR 30:200, Section 3(2)(b); or

d. Co-treatment which shall occur if more than one (1) provider is present and providing early intervention services at the same time. Each provider's service log shall document:

(i) Why this approach is being used;

(ii) The outcomes and activities;

(iii) Who is performing the activities; and

(iv) That the service providers involved are providing or learning about the early intervention at the same time.

3. If early intervention services are provided by a psychologist, counselor, marriage and family therapist, or social worker, the child shall not be required to attend the intervention. The reason the child's presence is clinically contraindicated shall be documented in the service note.

4. Disciplines providing early intervention shall be qualified professionals in accordance with 902 KAR 30:150, Section 2(1), or qualified paraprofessionals in accordance with 902 KAR 30:150, Section 2(2), and shall include the following:

a. An audiologist;

b. A marriage and family therapist;

c. A developmental interventionist;

d. A nurse;

e. A dietician;

f. An occupational therapist;

g. An occupational therapy assistant;

h. An orientation and mobility specialist;

i. A physical therapist;

j. A physical therapist's assistant;

k. A licensed psychologist, a certified psychologist with autonomous functioning, a licensed psychological practitioner, certified psychologist, or licensed psychological associate;

l. A speech-language pathologist;

m. A licensed social worker;

n. A licensed professional clinical counselor (LPCC);

o. A teacher of the visually impaired;

p. A teacher of the deaf and hard of hearing;

q. A physician;

r. An optometrist;

s. An ophthalmologist; or

t. A sign language and cued language specialist;

(f) Collateral service as provided in accordance with 902 KAR 30:200, Section 3(4);

(g) Assistive technology in accordance with 902 KAR 30:001, Section 1(3), and 30:130, Section 4;

(h) Respite which shall be a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the

child's developmental needs under the limitations of 902 KAR 30:200, Section 3(3);

(i) Transportation and related cost which shall be the costs of travel that are necessary to enable an eligible child to receive early intervention services; and

(j) Language access services for all families consistent with the provisions of the Individuals with Disabilities Education Improvement Act (IDEA), 34 C.F.R. 303.421(c), that, at a minimum, assists the family in understanding the purpose of First Steps and the family's procedural safeguards during referral, eligibility determination activities, and IFSP meetings.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner

AUDREY HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:160:

(a) What this administrative regulation does: This regulation describes the services that are provided and paid in the Kentucky Early Intervention system.

(b) The necessity of this administrative regulation: This regulation is necessary to eliminate confusion in the types of services provided and paid by the Kentucky Early Intervention System. The Kentucky Early Intervention System uses multiple funding streams to support the provision of services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.652 (5) requires the coordination of payment for early intervention services from federal, state, local and private insurance coverage, and the use of sliding fee scales.

(d) How this administrative regulation currently assists in the effective administration of the statutes: The regulation is needed to provide guidance and clarity for the implementation of the early intervention system in compliance with federal statute and regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The changes in this regulation correct the citations to the other early intervention regulations being amended.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the correction citation to the other referenced regulations.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.652(3) and (5) require the state to implement a statewide, comprehensive, interagency system of early intervention and to facilitate payment from multiple funding streams.

(d) How the amendment will assist in the effective administration of the statute: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers will be affected by these regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will continue to provide early intervention services as they currently practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs to entities to comply with the amended regulations.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Early intervention providers will be eligible for payment of covered services and participation in First Steps.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There are no costs to implement the amendment to this regulation.

(b) On a continuing basis: There are no costs to implement the amendment to this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding is necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, this administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the fifteen (15) local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1435, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative

regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.340 through 303.346 outlines the content of the Individual Family Service Plan (IFSP), including the content of the IFSP and responsibility and accountability. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards KRS 200.664 charges the Cabinet for Health and Family Services, Department for Public Health to develop an Individual Family Service Plan that conforms to the federal requirements for the IFSP.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation Kentucky is in full compliance with federal statutes and regulations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

##### 902 KAR 30:180. Procedural safeguards.

RELATES TO: KRS 13B.080, 13B.110, 200.672, 34 C.F.R. 303.400-303.438, 20 U.S.C. 1439

STATUTORY AUTHORITY: KRS 194A.050, 200.660

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer all funds appropriated to implement provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation establishes procedural safeguards for facilities participating in First Steps, Kentucky's Early Intervention System.

Section 1. Records. (1) In accordance with 34 C.F.R. 303.400 through 303.417, the parents of a child eligible for the Kentucky Early Intervention Program shall be afforded the opportunity to inspect, review, and receive records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints dealing with the child, and any other records maintained by First Steps staff about the child and the child's family.

(2) The first requested copy of the early intervention record released to the parent or guardian shall be at no cost.

(3) A fee of ten (10) dollars shall be charged for each additional copy and shall not prevent the parent or guardian from exercising the right to inspect and review those records.

(4) An early intervention provider or agency shall inform parents when personally identifiable information collected, maintained, or used during the provision of early intervention services is no longer needed to provide services to the child.

Section 2. Parental notice and consent. (1) Prior written notice.

(a) Prior written notice shall be given to the parents of an eligible child at least five (5) working days before the Point of Entry (POE) staff or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) The notice shall be in sufficient detail to inform the parents about:

1. The action that is being proposed or refused;
  2. The reasons for taking the action;
  3. All procedural safeguards that are available to the parent;
- and
4. The procedures under 34 C.F.R. 303.430-303.434.

(c) The written prior notice shall be:

1. Written in language understandable to the general public;
- and
2. Provided in the native language or other mode of communication of the parents, unless it is clearly not feasible to do so.

(d) If the native language or other mode of communication of the parent is not a written language, the POE staff, or designated service provider, shall take steps to ensure that:

1. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
2. The parent understands the notice; and
3. There is written evidence that the requirements of this paragraph have been met.

(2) Parent consent.

(a) Written parental consent shall be obtained before:

1. Administering any screening procedures;
2. Conducting all evaluations and assessments of a child;
3. Initiating the provision of early intervention services;
4. Billing private insurance; and
5. Disclosing personally identifiable information.

(b) If consent is not given for screening, evaluation, assessment, or early intervention services, the POE shall make reasonable efforts to ensure that the parent understands:

1. The nature of the evaluation and assessment or the services available; and
2. That the child will not receive the evaluation and assessment or services unless consent is given.

(3) The parents of an eligible child may determine if they, their child, or other family members will accept or decline any early intervention service, and may decline a service after first accepting it, without jeopardizing other early intervention services.

Section 3. Representation of Children and Surrogate Parents.

(1) Each POE shall ensure that the rights of an eligible child are protected if:

(a) A parent, as defined in 902 KAR 30:001, Section 1(29)[(28)], cannot be identified;

(b) The POE, after reasonable efforts, cannot discover the whereabouts of a parent; or

(c) The child is a ward of the state.

(2) If the child is a foster child and does not reside with the child's parents, the POE shall make reasonable efforts to obtain the informed consent of the parent for an initial evaluation. The POE shall not be required to obtain parental consent if:

(a) Despite reasonable efforts, the POE cannot discover the whereabouts of the parent;

(b) The rights of the parents have been terminated; or

(c) The rights of the parents to make educational decisions have been subrogated by a court and the consent for initial evaluation has been given by someone appointed by the judge to represent the child.

(3)(a) If more than one (1) party meets the definition of parent under 902 KAR 30:001, Section 1(29)[(28)], the biological or adoptive parent shall be presumed to be the parent unless the biological or adoptive parent does not have the legal authority to make educational decisions for the child.

(b) If there is a judicial order that identifies a specific person to

act as the parent of a child or to make educational decisions on behalf of a child, the order shall prevail.

(4)(a) A POE shall determine if a child needs a surrogate parent and, if so, shall assign a surrogate parent to the child.

(b) The surrogate parent of the child shall have all the rights afforded parents under 34 C.F.R. Part 303 to make decisions about early intervention issues for a child.

(c) A POE shall ensure the rights of a child are protected by appointing a surrogate parent to make educational decisions for the child if:

1. An individual cannot be identified as a parent;
2. The POE, after reasonable efforts, cannot discover the whereabouts of the parents;
3. The child is a ward of the state; or
4. The child is an unaccompanied homeless child.

(5) The POE shall keep a record of the reasonable efforts made to discover the whereabouts of the parents, including:

(a) Detailed records of the telephone calls made or attempted and the results of those calls;

(b) Copies of correspondence sent to the parents and any responses received; and

(c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(6) The POE shall have a procedure for selecting surrogates that is approved by the Department of Public Health. The department shall approve a procedure that is established to ensure that a surrogate:

(a) Is not an employee of the Kentucky Department for Public Health, the POE, or any other state agency that is involved in early intervention services or care of the child;

(b) Does not have any personal or professional interest that conflicts with the interests of the child; and

(c) Has knowledge and skills that ensure adequate representation of the child.

(7) A person who is otherwise qualified to be a surrogate parent shall not be considered an employee of the POE solely because he or she is paid by the POE to serve as a surrogate parent.

(8) If a child is an unaccompanied homeless child, appropriate staff of emergency shelters, transitional shelters, or street outreach programs may be appointed as temporary surrogate parents without regard to the criteria listed in subsection (6) of this section until a surrogate parent can be appointed that meets all the requirements of this section.

(9) The POE shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) calendar days after there is a determination by the Point of Entry that the child needs a surrogate.

(10) Responsibilities. A surrogate parent shall represent a child in all matters related to:

(a) The evaluation and assessment of the child;

(b) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(c) The ongoing provision of early intervention services to the child; and

(d) Any other rights established under this administrative regulation.

Section 4. Mediation. (1) Each POE shall ensure that procedures are established and implemented to allow parties to disputes involving any matter concerning the identification, evaluation, placement of the child or the provision of appropriate early intervention services to resolve the disputes through a mediation process which, at a minimum, shall be available if a hearing is requested under 34 C.F.R. 303.431.

(2) The POE agency shall use the mediation system established by the Department for Public Health.

(a) Mediation shall be adopted as an option to resolve complaints.

(b) Mediation shall be voluntary and freely agreed to by both parties, and shall not deny or delay a parent's right to a due process hearing to be conducted at any time.

(c) Unless the parent of a child and the cabinet otherwise



agree, the child shall continue to receive the early intervention services currently being provided during the interim of any proceeding involving a complaint. If the complaint involves the application for initial services, the child shall receive those services that are not in dispute.

(d) Mediators shall be trained in applicable state and federal law relating to the First Steps program.

(3) Time table for mediation.

(a) Within five (5) working days after a request for mediation is made to the department using a Mediation/Due Process Request Form, the appointment of a mediator shall be made.

(b) Either party may waive the mediation and, if waived, the parents shall be informed by the department within two (2) working days of this decision.

(c) Mediation shall be completed within thirty (30) working days of the receipt by the department of the request for mediation.

(d) At any time during the mediation process, a request for a due process hearing may be initiated.

(e) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the lead agency who has the authority to enter into an agreement.

(f) A copy of the legally binding agreement shall be mailed by the mediator to each party within five (5) working days following the mediation conference. A copy shall also be filed by the mediator with the department. The agreement shall specify in writing the agreement reached by the parties.

(4) A written mediation agreement shall not conflict with state and federal laws and shall be to the satisfaction of both parties. Satisfaction shall be indicated by the signature of both parties on the legally binding agreement.

(5) Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process.

#### Section 5. Due Process Procedures for Parents and Children.

(1) An administrative hearing shall be conducted within fifteen (15) days of receipt of a request for hearing by an impartial hearing officer appointed by the secretary of the cabinet.

(2) The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.080.

(3) A recommended decision conforming in content to the requirements of KRS 13B.110 shall be forwarded to the family and the cabinet within ten (10) days of the administrative hearing.

(4) All parties to the appeal shall have five (5) days to file written exceptions to the recommended decision.

(5) A final decision on the recommendation shall be made no later than forty-five (45) days following receipt of the appeal.

(6) Any parent involved in an administrative hearing may:

(a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible for the First Steps Program;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;

(d) Obtain a written or electronic verbatim transcription of the proceeding; and

(e) Obtain written findings of fact and decisions.

(7) Any proceeding for implementing the complaint resolution process established in Section 4 of this administrative regulation shall be held at a time and place that is reasonably convenient to the parent.

(8) Any party aggrieved by the findings and decision regarding an administrative hearing may bring a civil action in state or federal court under 20 U.S.C. 1439(a)(1).

(9) During the pendency of any proceeding involving a hearing under this section, unless the POE and parents of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided. If the complaint

involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

Section 6. State Complaint Procedures. The procedures established in this section shall apply to the Cabinet for Health and Family Services, Department for Public Health as to written complaints submitted pursuant to 34 C.F.R. 303.432-303.434.

(1) Any organization or individual may file a signed written complaint. The complaint shall be submitted on a First Steps Complaint Form and shall include:

(a) A statement that the state lead agency, point of entry, or early intervention provider has violated a requirement of state or federal law;

(b) The facts on which the complaint is based; and

(c) The signature and contact information for the complainant.

(2) If the alleged violation is with respect to a specific child, the complaint shall include:

(a) The child's name and residential address;

(b) The name of the early intervention provider serving the child;

(c) A description of the nature of the problem of the child, including facts related to the problem; and

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(3) The alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department for Public Health.

(4) The party filing the complaint shall forward a copy of the complaint to the point of entry or early intervention provider serving the child at the same time the party files the complaint with the state lead agency.

(5) Within sixty (60) calendar days after a complaint is filed, the Department for Public Health shall:

(a) Carry out an independent on-site investigation, if the agency determines that an investigation is necessary;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Provide the point of entry or early intervention provider an opportunity to respond to the complaint, including:

1. A proposal to resolve the complaint; and

2. An opportunity for a parent who has filed a complaint and the point of entry or early intervention provider to voluntarily engage in mediation, in accordance with Section 4 of this administrative regulation;

(d) Review all relevant information and make an independent determination as to whether the point of entry or early intervention provider is violating a requirement of the Kentucky Early Intervention System;

(e) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

1. Findings of fact and conclusions; and

2. The reasons for the agency's final decision;

(f) Permit an extension of the sixty (60) day time limit only if exceptional circumstances exist with respect to a particular complaint; and

(g) Include procedures for effective implementation of the state lead agency's final decision, if needed, including:

1. Technical assistance activities;

2. Negotiations; and

3. Corrective actions to achieve compliance.

(6) If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of a due process hearing, the Department for Public Health shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process action shall be resolved within the sixty (60) calendar-day timeline using the complaint procedures established in this section.

(7) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the:

(a)[a.] Hearing decision shall be binding; and

(b)[b-] Agency shall inform the complainant of that effect.

(8) A complaint alleging the state lead agency, point of entry, or early intervention provider's failure to implement a due process decision shall be resolved by the Department for Public Health.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "First Steps Complaint Form", August 2012 edition; and

(b) "Mediation/Due Process Request Form", March 2014[May 2012] edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:180:

(a) What this administrative regulation does: This administrative regulation establishes the procedural safeguards required by Part C of the Individuals with Education Act, Pub.L. 108-446, Section 639.

(b) The necessity of this administrative regulation: Procedural safeguards are a required state component under 34 C.F.R. Subpart E 303.340 through 303.438.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.650(6) requires the state to be in compliance with federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides a description of the actions and requirements for the agency, early intervention provider and family while implementing procedural safeguards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendments for this regulation correct the citations to other regulations. The incorporated Request for Medication/Due Process form was revised to correct the timeline from calendar to working days to be in compliance with this regulation.

(b) The necessity of the amendment to this administrative regulation: Changes are necessary to reflect the changes in referenced regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 200.650 to 200.676 requires the Cabinet to administer all funds appropriated to implement administrative

regulations and promulgate regulations.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure compliance with federal statute and regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: The affected entities include: The Cabinet for Health and Family Services (one (1) state agency), fifteen (15) points of entry/local lead agencies, 1,500 providers and 6,000 children and their families.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Cabinet for Health and Family Services will need to understand the definition of parent found in 902 KAR 30:001 when determining the need for a surrogate parent appointment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does allow the Cabinet to assess a fee of ten (10) dollars for a requested copy of the early intervention record. This shall not prevent the family from exercising the right to inspect and review those records. The Cabinet has legal services as part of the administrative structure of the agency.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): Families and providers will have rights protected and mediation and/or due process available when needed through the state lead agency.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: There are no costs to implement this regulation.

(b) On a continuing basis There are no costs to implement this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation? Federal Part C funds, state general funds, and Medicaid funds are used to support the early intervention system.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no changes to the fees listed in this regulation with this amendment. There is no increase in funding to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the 15 local Point of Entry, approx. 1,500 direct service providers as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1439, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? There will be no new revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no expenditures to implement this administrative regulation during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303 Subpart E - Procedural Safeguards outlines the states responsibilities in assuring the rights of children and parents who receive early intervention services. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.672 charges the Cabinet for Health and Family Services, Department for Public Health to protect the rights of disabled child, parent, or guardian being served by the system.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation to mirror the federal language regarding procedural safeguards the state will be in full compliance under this part of the federal statute.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Maternal and Child Health (Amendment)

##### 902 KAR 30:200. Coverage and payment for services.

RELATES TO: KRS 200.654, 200.672, 34 C.F.R. 303.520, 303.521, 20 U.S.C. 1438, 1440

STATUTORY AUTHORITY: KRS 194A.050, 200.654, 200.660(3), (7), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.660 requires the Cabinet for Health and Family Services to administer funds appropriated to implement the provisions of KRS 200.650 to 200.676, to enter into contracts with service providers, and to promulgate administrative regulations necessary to implement KRS 200.650 to 200.676. This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made on behalf of eligible recipients.

Section 1. Participation Requirements. An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(1) Submit to an ongoing review by the Department for Public Health, or its agent, for compliance with 902 KAR Chapter 30;

(2)(a) Meet the qualifications for a professional or

paraprofessional established in 902 KAR 30:150; or

(b) Employ or contract with a professional or paraprofessional who meets the qualifications established in 902 KAR 30:150;

(3) Ensure that a professional or paraprofessional employed by the provider who provides a service in the First Steps Program shall complete~~attend~~ training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services;

(4) Agree to provide First Steps services as authorized by an individualized family service plan as required by 902 KAR 30:130;

(5) Agree to maintain and to submit as requested by the Department for Public Health required information, records, and reports to ensure compliance with 902 KAR Chapter 30;

(6) Establish a contractual arrangement with the Cabinet for Health and Family Services for the provision of First Steps services; and

(7) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health and Family Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

Section 2. Reimbursement. The Department for Public Health shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the fixed upper limit established in this section for the service being provided. (1) A charge submitted to the Department for Public Health shall be the provider's usual and customary charge for the same service.

(2) The fixed upper limit for services shall be as established in this subsection.

(a) Initial evaluation. The developmental component of the initial evaluation for a child without an established risk condition shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$270 per service event.

2. In the home or community site, the fee shall be \$270 per service event.

(b) Five (5) Area Assessment. The developmental component of the initial evaluation for the child with an established risk condition shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(c) Annual or exit assessment. The annual or exit assessment~~conducted by the primary service provider~~ shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(d) Discipline specific assessment. The discipline specific assessment conducted by a direct service provider shall be provided by face-to-face contact with the child and parent.

1. In the office or center-based site, the fee shall be \$175 per service event.

2. In the home or community-based site, the fee shall be \$175 per service event.

(e) Record review. A record review shall be provided by a Department for Public Health approved team and paid at the contracted amount.

(f) Intensive clinic evaluation. The intensive level evaluation shall be provided by a Department for Public Health approved team and shall include face-to-face contact with the child and parent.

1. In the office or center-based site, which involves a board certified physician, the fee shall be \$1,100 per service event.

2. In the community site, which involves a board certified physician, the fee shall be \$1,100 per service event.

(g) Early intervention or collateral services in accordance with Section 3(1), (2), (4) and (5) of this administrative regulation shall have the fixed upper limits established in this paragraph.

1. For an audiologist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
2. For a marriage and family therapist:
  - a. In the office or center based site, the fee for a collateral ~~service or service~~ or an early intervention service including cotreatment shall be sixty-three (63) per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) per hour of service.
3. For a licensed psychologist, a licensed psychological practitioner, a licensed professional clinical counselor, or certified psychologist with autonomous functioning:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
4. For a licensed psychological associate or a certified psychologist:
  - a. In the office or center-based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.
5. For a developmental interventionist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
6. For a registered nurse:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
7. For a dietitian:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
8. For an occupational therapist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
9. For an occupational therapy assistant:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.
10. For an orientation and mobility specialist:
  - a. In the office or center-based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
11. For a physical therapist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
12. For a physical therapist assistant:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be forty-six (46) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be seventy (70) dollars per hour of service.
13. For a speech therapist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
14. For a social worker:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.
15. For a teacher of the deaf and hard of hearing:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
16. For a teacher of the visually impaired:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
17. For a physician or a nurse practitioner providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of service. A physician or a nurse practitioner shall not receive reimbursement for early intervention.
18. For an assistive technology specialist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-one (61) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-one (81) dollars per hour of service.
19. For a sign language and cued language specialist:
  - a. In the office or center based site, the fee for a collateral service or an early intervention service including cotreatment shall be sixty-three (63) dollars per hour of service; or
  - b. In the home or community site, the fee for a collateral service or an early intervention service including cotreatment shall be eighty-nine (89) dollars per hour of service.
20. For an optometrist or ophthalmologist providing collateral service in an office or center based site, the fee shall be sixty-three (63) dollars per hour of service. An optometrist or ophthalmologist shall not receive reimbursement for early intervention.
  - (h) Respite shall be seven (7) dollars and sixty (60) cents per hour.
    - (3)(a) For early intervention or collateral services, hours shall be determined using the beginning and ending time for a service.
      1. The hours shall be computed as follows:
        - a. Fifteen (15) to twenty-nine (29) minutes shall equal 0.25 hours;
        - b. Thirty (30) to forty-four (44) minutes shall equal 0.50 hours;
        - c. Forty-five (45) to fifty-nine (59) minutes shall equal 0.75

hours; and

d. Sixty (60) to seventy-four (74) minutes shall equal one (1) hour.

2. Services shall be documented in the First Steps data management system and shall include:

a. A service note describing the intervention provided during the session;

b. A list of participants present during the early intervention session;

c. The caregiver's report of the child's progress since the last session, including any modifications to the suggested intervention or barriers to implementing the intervention;

d. The child's response to intervention that describes the skill level of the child and if the skill has increased, decreased, or stayed the same and the method used to measure progress; and

e. The plan for the next visit, based on the child's response to intervention and the IFSP outcome[a list of all those present during the session, a description of each early intervention service provided, the child's response, and future action to be taken].

(b) Service documentation shall be entered within ten (10)[five (5)] calendar days of the service delivery date. Documentation entered after ten (10) days from the date of service shall be immediately disapproved for payment.

(c) Once the provider has entered a corrected service log, a payment adjustment shall be made. Payment shall be prorated on the following scale:

1. Correction entered within one (1) to five (5) days, claim paid at a three (3) dollar reduction;

2. Correction entered within six (6) to ten (10) days, claim paid at an eight (8) dollar reduction;

3. Correction entered within eleven (11) to fifteen (15) days, claim paid at a twenty-five (25) dollar reduction;

4. Correction entered within sixteen (16) to thirty (30) days, claim paid at one half the maximum KEIS payment; and

5. Correction entered after thirty (30) days or beyond shall be disapproved and not adjusted for payment[2. The hours shall be computed as follows:

a. Fifteen (15) to twenty-nine (29) minutes shall equal 0.25 hours;

b. Thirty (30) to forty-four (44) minutes shall equal 0.50 hours;

c. Forty-five (45) to fifty-nine (59) minutes shall equal 0.75 hours; and

d. Sixty (60) to seventy-four (74) minutes shall equal 1.00 hour].

(d)[(b)] For service coordination services, hours shall be determined using the beginning and ending time for a service documented in staff notes in accordance with 902 KAR 30:110, Section 2(10)[paragraph (a) of this subsection].

1. The hours shall be computed as follows:

a. One (1) to twenty-two (22) minutes shall equal 0.25 hours;

b. Twenty-three (23) to thirty-seven (37) minutes shall equal 0.50 hours;

c. Thirty-eight (38) to fifty-two (52) minutes shall equal 0.75 hours; and

d. Fifty-three (53) to sixty-seven (67) minutes shall equal one (1)[1.00] hour.

2. Service coordination minutes spent over the course of a day on a child or family shall be accumulated at the end of the day in order to determine the total number of hours spent.

(4) A payment for a discipline specific assessment, five (5) area assessment, annual or exit assessment, initial or intensive evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service. An individual provider shall not be reimbursed for participation on the intensive evaluation team.

(5) Payment for assistive technology devices shall be made in accordance with 902 KAR 30:130, Section 3.

(a) The total rental cost of an assistive technology device shall not exceed the purchase price of that device. The length of rental shall be based on the purchase price of the device and shall not exceed ten (10) months in length.

(b) The total purchase cost of an assistive technology device shall include the actual cost of the item being purchased, all related

shipping charges, and an administrative fee not to exceed ten (10) percent.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles using the most direct route;

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported; or

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service shall be thirty-two (32) dollars per child per hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional who can practice without direct supervision.

### Section 3. Limitations. (1) Service Assessments.

(a) Payment for a discipline specific assessment shall be limited to three (3) assessments per discipline per child, unless additional hours are necessary based on the reasons listed in paragraph (b) and documented in accordance with 902 KAR 30:130, Section 1(7) from birth to the age of three (3) unless preauthorized by the Department for Public Health in accordance with Section 4 of this administrative regulation.

(b) 1. A service assessment payment shall not be made for the provision of routine early intervention services by a discipline in the general practice of that discipline.

2. Payment for a service assessment shall be restricted to the need for additional testing due to new concerns or significant change in the child's status that impacts the early intervention services authorized on the IFSP.

3. Routine activity of assessing progress and outcomes shall be billed as early intervention.

(2) For early intervention, unless prior authorized by the Department for Public Health in accordance with Section 4 of this administrative regulation, limitations for payment of services shall be as established in this subsection.

(a) For office, center, or home and community sites:

1. Payment shall be limited to no more than one (1) hour per day per child per discipline by a:

a. Professional meeting the qualifications established in 902 KAR 30:150; or

b. Paraprofessional meeting the qualifications established in 902 KAR 30:150.

2. Payment shall be limited to no more than twenty-four (24) hours for a single discipline and thirty-six (36) hours for more than one (1) discipline during a six (6) month period and for group shall be limited to an additional forty-eight (48) hours during a six (6) month period.

(b) For group:

1. Children shall not be eligible for both group and individual early intervention services by the same discipline concurrently on the Individualized Family Services Plan.

2. Group service shall be provided by enrolled First Steps providers in accordance with 902 KAR 30:150, Section 1(11). The ratio of staff to children in group early intervention shall be limited to a maximum of three (3) children per professional and paraprofessional per group.

(c) Payment for siblings seen at the same time shall be calculated by dividing the total time spent by the number of siblings to get the amount of time to bill per child.

(d) Payment for a service shall be limited to a service that is authorized by the IFSP team in accordance with 902 KAR 30:130, Section 3(3).

(e)1. Except as provided in subparagraph 2. of this paragraph, payment shall be limited to a service provided as a face-to-face contact with the child and either the child's parent or caregiver.

2. Early intervention family services authorized by KRS 200.654(7) may be provided without the child present if the reason the child's presence is clinically contraindicated is documented in the session note.

(3) For respite, payment shall:

- (a) Be limited to no more than eight (8) hours of respite per month, per eligible child;
- (b) Not be allowed to accumulate beyond each month; and
- (c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.
- (4) For collateral services, payment for collateral services shall be a billable service for First Steps providers, who are providing early intervention services for the eligible child through an IFSP and paid by the First Steps system.
- (a) The length of an IFSP meeting shall be limited to no more than one (1) hour.
- (b) Payment for attendance at one (1) Admissions and Release Committee (ARC) meeting held prior to a child's third birthday shall be limited to the service coordinator and primary service provider selected by the IFSP team.
- (c) Participation at an initial IFSP meeting by an initial evaluator shall be limited to an evaluator who conducted the initial evaluation in accordance with 902 KAR 30:120, Section 2(5)(a). Payment shall be at the collateral services rate for the discipline that the evaluator represents.
- (5) For cotreatment, payment shall be limited to three (3) disciplines providing services concurrently.
- (6) Unless prior authorized by the Department for Public Health due to a shortage of direct service providers, an initial evaluator shall not be eligible to provide early intervention to a child whom the evaluator evaluated and which resulted in the child becoming eligible.

Section 4. Prior Authorization Process. (1) Authorization for payment for early intervention services beyond the limits established in Section 3 of this administrative regulation shall be submitted to the cabinet or its designee, as determined by the Department for Public Health, and approved prior to the service being delivered and shall include the following:

- (a) A service exception request completed in the First Steps data management system; and
- (b) The Record Review Supporting Documentation.
- (2) The record review team shall issue a written recommendation for the IFSP team to consider within ten (10) calendar days of receipt of the request.
- (3) If the IFSP team is not in agreement with the recommendation of the record review team:
  - (a) A request for further review shall be submitted to the Department for Public Health; and
  - (b) A three (3) person team from the Department for Public Health, Division of Maternal and Child Health, including the division director, shall render a recommendation.
- (4) If the IFSP team is not in agreement with the three (3) person team recommendation established in subsection (3)(b) of this section:
  - (a) The child's IFSP team shall be asked to reconvene for an IFSP meeting with a representative from the record review team and a representative from the three (3) member team; and
  - (b) If the IFSP team concludes at that IFSP meeting that the services are still needed, payment for the service shall be authorized for the duration of the current IFSP.

Section 5. System of Payment and Fees. (1) All families enrolling in the First Steps system shall be assessed for the family's ability to pay a participation fee for early intervention services in accordance with KRS 200.654 (7)(f) to (m). Families with private or public insurance shall not be charged disproportionately more than families without insurance and shall receive a copy of the Your Financial Responsibilities in First Steps brochure].

- (2) A charge to the family shall not be made for the following functions:
  - (a) Child find activities;
  - (b) Evaluation and assessment of the child and family;
  - (c) Service coordination; and
  - (d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans; and

- (e) The implementation of procedural safeguards.
- (3) Families shall receive a copy of the First Steps System of Payment notice during the intake meeting, at the initial IFSP meeting and each subsequent IFSP meeting.
- (4) Payment of fees shall be for the purpose of:
  - (a) Maximizing available sources of funding for early intervention services; and
  - (b) Giving families an opportunity to assist with the cost of services if there is a means to do so, in a family share approach.
- (5)[(4)] The family share payment shall:
  - (a) Be based on a sliding fee scale;
  - (b) Be explained to the family by the POE staff[service coordinator]; and
  - (c) Begin with the provision of an[in the month of the IFSP, at the time] early intervention service[services are authorized], and continue for the duration of participation in early intervention services.
- (6)[(5)] The ability to pay shall:
  - (a) Be based on the level of the family gross income identified on the last Federal Internal Revenue Service statement or check stubs from the four (4) most recent consecutive pay periods, as reported by the family; and
  - (b) The level of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the Federal Department of Health and Human Services, based on the following scale:
    1. Below 249 percent of poverty, there shall be no payment;
    2. From 250 percent of poverty to 299 percent, the payment shall be five (5) dollars per month of participation;
    3. From 300 percent of poverty to 349 percent, the payment shall be ten (10) dollars per month of participation;
    4. From 350 percent of poverty to 399 percent, the payment shall be twenty-five (25) dollars per month of participation;
    5. From 400 percent of poverty to 449 percent, the payment shall be seventy-five (75) dollars per month of participation;
    6. From 450 percent of poverty to 499 percent, the payment shall be \$150 per month of participation;
    7. From 500 percent of poverty to 549 percent, the payment shall be \$200 per month of participation;
    8. From 550 percent of poverty to 599 percent, the payment shall be \$300 per month of participation; and
    9. From 600 percent of poverty and above, the payment shall be \$400 per month of participation[1. Below 200 percent of poverty, there shall be no payment;
    2. From 200 percent of poverty to 299 percent, the payment shall be twenty (20) dollars per month of participation;
    3. From 300 percent of poverty to 399 percent, the payment shall be thirty (30) dollars per month of participation;
    4. From 400 percent of poverty to 499 percent, the payment shall be forty (40) dollars per month of participation;
    5. From 500 percent of poverty to 599 percent, the payment shall be fifty (50) dollars per month of participation; or
    6. From 600 percent of poverty and over, the payment shall be \$100 per month of participation].
- (7)[(6)] The family share participation fee shall not:
  - (a) Exceed the cost of the actual monthly Part C service;
  - (b) Apply to a family whose child is covered by public insurance benefits (Medicaid); or
  - (c) [who receives only evaluation, assessment, service coordination services, or IFSP development in the initial calendar month of eligibility. The service coordinator shall notify the Department for Public Health First Steps Family Share Administrator immediately if the initial IFSP date is different than the month that early intervention services are started;
  - (c) Apply to a family that does not receive services except those described in paragraph (b) of this subsection for at least one (1) month if prior authorized by the Department for Public Health First Steps Family Share Administrator in accordance with paragraph (d)1 and 2 of this subsection. A request shall not be submitted for a retroactive period unless an extenuating circumstance occurs such as an unexpected hospitalization; or
  - (d) Prevent or delay a child from receiving services.
- (8) The family may request a reduction or waiver of the family

share fee if the family shows to the satisfaction of the Department for Public Health an inability to pay, in accordance with the following:

(a)[1-] The service coordinator shall submit to the Department for Public Health First Steps Family Share Administrator, on behalf of the family, a Family Share Extraordinary Expenses Worksheet (FS-24)[waiver request] to have the amount of the family share payment reduced or eliminated for a period not to exceed three (3) calendar months. A request shall not be submitted for a retroactive period unless extenuating circumstances, such as an unexpected hospitalization, occurs; and

(b)[2-] The family shall undergo a financial review by the Department for Public Health that may:

1.[a-](i) Adjust the gross household income by subtracting extraordinary expenses[medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's other family members' disabilities]; and

2.a.[(ii)] Result in a calculation of a new family share payment amount based on the family's adjusted income compared to the percentage of the poverty level established in subsection (6)(b) of this section[paragraph (b)2 of this subsection]. If a recalculation is completed, the Department for Public Health shall conduct a review at least quarterly; or

b. Suspend or reduce the family share payment, based on a verified financial crisis that would be exacerbated by their obligated family share payment. The Department for Public Health shall conduct a review at least quarterly.

(9)[(7)] In accordance with 902 KAR 30:180, the family may contest the imposition of a fee or the determination of their ability to pay by filing:

- (a) A request for mediation;
- (b) A request for a due process hearing;
- (c) An administrative complaint; or
- (d) An appeal to the Part C Coordinator for final resolution.

(10)[(8)] Income~~[and insurance coverage]~~ shall be verified during the intake process and at six (6) month intervals, and more often if changes in household income will result in a change in the amount of the obligated family share payment.

(11)[(9)] A family that refuses to have its income verified shall be assessed a family share payment of \$400[\$400] per month of participation.

(12)[(10)] If multiple children in a family receive early intervention services, the family share payment shall be the same as if there were one (1) child receiving services.

(13)[(11)](a) If a family has the ability to pay the family share but refuses to do so for three (3) consecutive months, the family shall receive service coordination, IFSP development, procedural safeguards, and assessment services only until discharged from the program or the family share balance is paid in full, whichever occurs first.

(b) The service coordinator shall provide the family a financial notice of action at thirty (30) calendar days prior to the suspension of ongoing IFSP services.

#### Section 6. Use of Insurance. (1) Public Insurance.

(a) The state lead agency shall be the enrolled Medicaid provider for early intervention services. A contracted provider or agency shall not bill Medicaid directly for early intervention services provided in accordance with the IFSP.

(b) Written notification in accordance with 34 C.F.R. 303.520 (3)(i)-(iv) shall be provided to the child's parent or guardian before the use of public benefits or insurance to pay for early intervention services.

(c) A parent or guardian shall not be required to sign up for or enroll in public benefits or insurance programs as a condition of receiving early intervention services.

#### (2) Private Insurance.

(a) Parent or guardian consent shall be obtained:

1. For the use of private insurance to pay for the initial provision of an early intervention service on the IFSP; and

2. Each time consent for services is required due to an increase in the frequency, length, duration, or intensity in the provision of service in the child's IFSP.

(b) A family who chooses to use private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service.

(c) The fee paid to the early intervention provider by KEIS shall be the full reimbursement from KEIS and the provider shall not charge the family[include] any co-pay or deductible associated with the services[bringing the total to the maximum rate for KEIS allowed by Section 2 of this administrative regulation].

(d) Families shall be responsible for payment of their insurance premiums~~[and may incur a decrease in the annual cap for certain services under their policy]~~.

(e) Federal Part C funds may be used to pay the cost of insurance premiums when obtaining insurance for the child is the most cost effective method for KEIS to pay for early intervention services;

(f) A family who has the ability to pay and gives consent for the use of private insurance may waive the family share fee. If the consent to bill private insurance is revoked by the family, the family shall be assessed the corresponding family share fee;

(g) A family who has the ability to pay and does not give consent for the use of private insurance shall be assessed a family share fee[receive only those services provided at no cost to the family] as described in Section 5(6)(b)[(2)] of this administrative regulation.

(h)[(e)] If a family is assessed as having an inability to pay and does not give consent for the use of private insurance, this lack of consent shall not prevent or delay a child from receiving services.

(i)[(f)] If a family receives payment from insurance, these funds shall be surrendered to the early intervention provider for services rendered. Failure to surrender the payment shall result in the amount of the insurance payment being added to the Family Share balance due.

(j)[(g)] A provider shall bill a third-party insurance for an early intervention service prior to billing First Steps. Documentation regarding the billing, the third-party insurance representative's response, and payment, if any, shall be maintained in the child's record and submitted through the First Steps data management system.

Section 7. Use of funds. Consistent with 34 C.F.R. 303.120 through 303.122 and 303.220 through 303.226, the state lead agency may use the federal Part C funds for activities or expenses that are reasonable and necessary for implementing the Kentucky Early Intervention System program for infants and toddlers with disabilities including:

(1) For direct early intervention services for infants and toddlers with disabilities and their families that are not otherwise funded through other public or private sources;

(2) To expand and improve services for infants and toddlers with disabilities and their families; and

(3) To strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, service, and personnel for the purposes of:

- (a) Identifying and evaluating at-risk infants and toddlers;
- (b) Making referrals for the infants and toddlers identified and evaluated under paragraph (a) of this subsection; and
- (c) Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to eligibility of the infant or toddler for services.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Record Review Supporting Documentation", July 2012;~~[and]~~
- (b) "System of Payment Notice", April 2014; and
- (c) "Family Share Extraordinary Expenses Worksheet", December 2013~~[Your Financial Responsibilities in First Steps", July 2012]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday

through Friday, 8 a.m. to 4:30 p.m.

STEPHANIE MAYFIELD GIBSON, MD, FCAP, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 9, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2014, at 9:00 a.m. in the Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments regarding this proposed administrative regulation. You may submit written comments on the proposed administrative regulation until June 2, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573, email tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Paula Goff

(1) Provide a brief summary of 902 KAR 30:200:

(a) What this administrative regulation does: This administrative regulation establishes the rates to be paid to providers for the provision of approved services (i.e. Physical Therapy, Occupational Therapy), sets forth limitations for billable services, and establishes processes for requesting services beyond set parameters, for assessing and collecting family participation payments, and the use of public and private insurance to cover the cost of early intervention services.

(b) The necessity of this administrative regulation: 902 KAR 30:200 is necessary because the First Steps program operates on a fee-for-service system requiring the establishment of rates for covered services.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation describes the rate structure used by the Cabinet for Health and Family Services when contracting with service providers as well as the sliding fee scale.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment to this administrative regulation revises the family share participation fees to incentivize the use of private insurance to help cover the cost of early intervention services. It sets sanctions of the provider who fails to follow the service provider agreement and it outlines the permissive use of federal funds.

(b) The necessity of the amendment to this administrative regulation: The revisions to this administrative regulation are necessary to bring the program into full compliance with the federal regulations as required by the federal grant application.

(c) How the amendment conforms to the content of the authorizing statute: KRS 200.660 assigns the Cabinet for Health and Family Services the duty of appropriately administering all

funds related to the implementation of the First Steps program. Further, KRS 200.660 directs the Cabinet for Health and Family Services to develop and implement a sliding fee scale in accordance with federal regulation, and contract with providers to provide First Steps services. KRS 200.650(6) and KRS 200.652(3) require a statewide comprehensive early intervention system that is in compliance with federal statute and regulation.

(d) How the amendment will assist in the effective administration of the statutes: These amendments will help to assure appropriate compensation to First Steps service provider and will assure that the Cabinet for Health and Family Services is administering the sliding fee scale in a manner consistent with federal regulation and intent.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 1,500 early intervention providers, including Point of Entry staff, will be affected by these regulations. Over 6,000 eligible children and their families will be affected by the service changes related to the regulations. No state or local governments are affected by the administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Point of Entry staff will need to fully understand the financial assessment of the family's ability to pay and the requirements for the consent for the use of private insurance; as well as, when a family will not be charged a family share participation fee. Early intervention providers will need to understand when they are required to bill private insurance before submitting a bill to KEIS for payment. Families will need to understand the incentives available to them by giving consent to bill insurance so they can make an informed decision.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The Kentucky Early Intervention System currently costs approximately \$40 million dollars. The revisions to this administrative regulation do not cost the entities affected by the amended regulations any additional dollars.

(c) As a result of the compliance, what benefits will accrue to the entities identified in question (3): The amended regulations will benefit early intervention providers, including service coordinators by providing needed clarity so that they are more effective in their roles within the system.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: No new costs are incurred in implementing this regulation.

(b) On a continuing basis: No new costs are incurred in implementing this regulation.

(6) What is the source of the funding that will be used for the implementation and enforcement of the administrative regulation: Federal Part C funds and state general funds will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation or its amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no direct or indirect increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because First Steps regulations apply consistently across all children and families participating in the First Steps program as well as all providers participating in the First Steps program.



FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the fifteen (15) local Point of Entry, approx. 1,500 direct service providers, families receiving early intervention services, as well as the state administrative office that governs the First Steps program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 20 U.S.C. 1438, 1440, 34 C.F.R. Part 303, KRS 194A.050, KRS 200.650-676

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenue generated by this administrative regulation for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenue generated by this administrative regulation during subsequent years.

(b) How much will it cost to administer this program for the first year? There will be no new expenditures to implement this administrative regulation during the first year.

(c) How much will it cost to administer this program for subsequent years? There will be no new expenditures to implement this administrative regulation during the subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on local or state government for this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 C.F.R. 303.500 through 303.521 outlines the federal policies and procedures related to financial matters. It states that First Steps must be the payor of last resort. It also provides provisions for charging a family participation fee. This amendment ensures full compliance with the provisions under that part.

2. State compliance standards. KRS 200.674 charges the Cabinet for Health and Family Services, Department for Public Health in the use of early intervention funds.

3. Minimum or uniform standards contained in the federal mandate. By revising this administrative regulation, Kentucky is in full compliance with the federal requirements to ensure First Steps is the payor of last resort for early intervention services.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment does not impose stricter than federal requirements.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirement. This amendment does not impose stricter than federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Community Alternatives  
(Amendment)

**907 KAR 1:835. Michelle P. waiver services and reimbursement.**

RELATES TO: KRS 205.520(3), 205.5605, 205.5606, 205.5607, 205.635, 42 C.F.R. 440.180

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5606, 42 C.F.R. 440.180, 42 U.S.C. 1396a, 1396b, 1396d, 1396n

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds[the provision of medical assistance to Kentucky's indigent citizenry]. This administrative regulation establishes the coverage and reimbursement provisions for Michelle P. waiver services.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center licensed in accordance with 902 KAR 20:066.

(3) "ADHC services" means health-related services provided on a regularly-scheduled basis that ensure optimal functioning of a Michelle P. waiver recipient who does not require twenty-four (24) hour care in an institutional setting.

(4) "Advanced practice registered nurse[practitioner]" or "APRN[ARNP]" means a person who acts within his or her scope of practice and is licensed in accordance with KRS 314.042.

(5) "Assessment team" means a team which:

(a) Conducts assessment or reassessment services; and

(b) Consists of:

1. Two (2) registered nurses; or

2. One (1) registered nurse and one (1) of the following:

a. A social worker;

b. A certified psychologist with autonomous functioning;

c. A licensed psychological practitioner;

d. A licensed marriage and family therapist; or

e. A licensed professional clinical counselor.

(6) "Behavioral support specialist" means an individual who has:

(a) A master's degree from an accredited institution with formal graduate course work in a behavioral science; and

(b) At least one (1) year of experience in behavioral programming.

(7) "Blended services" means a nonduplicative combination of Michelle P. waiver services identified in Section 7 of this administrative regulation and consumer-directed option services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(8) "Budget allowance" is defined by KRS 205.5605(1).

(9) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS Chapter 319.

(10) "Communicable disease" means a disease that is transmitted:

(a) Through direct contact with an infected individual;

(b) Indirectly through an organism that carries disease-causing microorganisms from one (1) host to another; or

(c) Indirectly by a bacteriophage, a plasmid, or another agent that transfers genetic material from one (1) location to another.

(11) "Consumer" is defined by KRS 205.5605(2).

(12) "Consumer-directed option" or "CDO" means an option established by KRS 205.5606 within the home and community-based service waivers which allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(13) "Covered services and supports" is defined by KRS 205.5605(3).

(14) "DCBS" means the Department for Community Based Services.

(15) "Department" means the Department for Medicaid Services or its designee.

(16) "Developmental disability" means a severe, chronic disability that:

(a) Is attributable to:

1. Cerebral palsy or epilepsy; or

2. Any other condition, excluding mental illness, closely related to an intellectual disability resulting in impairment of general intellectual functioning or adaptive behavior similar to that of an individual with an intellectual disability and which requires treatment or services similar to those required by persons with an intellectual disability;

(b) Is manifested prior to the individual's 22nd birthday;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; or

6. Capacity for independent living.

(17) "Direct-contact staff" means an individual hired by a Michelle P. waiver provider to provide services to the recipient and who:

(a) 1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma or GED; or

2.a. Is twenty-one (21) years of age or older; and

b. Is able to communicate with a recipient in a manner that the recipient or recipient's legal representative or family member can understand;

(b) Has a valid Social Security number or valid work permit if not a U.S. citizen;

(c) Can understand and carry out simple instructions;

(d) Has the ability to keep simple records; and

(e) Is managed by the provider's supervisory staff.

(18) "Electronic signature" is defined by KRS 369.102(8).

(19) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(20) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081; and

(b) Medicare and Medicaid certified.

(21)[(20)] "ICF-IID" means an intermediate care facility for individuals with an intellectual disability.

(22)[(21)] "Intellectual disability" means an individual has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of seventy (70) or below;

(c) Concurrent ~~deficits~~[difficulties] or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;

2. Self-care;

3. Home living;

4. Social or interpersonal skills;

5. Use of community resources;

6. Self-direction;

7. Functional academic skills;

8. Work;

9. Leisure; or

10. Health and safety; and

(d) Had an onset prior to eighteen (18) years of age.

(23)[(22)] "Level of care determination" means a determination that an individual meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation.

(24)[(23)] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(25)[(24)] "Licensed practical nurse" or "LPN" means a person who:

(a) Meets the definition of KRS 314.011(9); and

(b) Works under the supervision of a registered nurse.

(26)[(25)] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3).

(27)[(26)(26)] "Michelle P. recipient" means an individual who:

(a) Is a recipient as defined by KRS 205.8451(9);

(b) Meets the Michelle P. waiver service level of care criteria established in Section 5 of this administrative regulation; and

(c) Meets the eligibility criteria for Michelle P. waiver services established in Section 4 of this administrative regulation.

(28)[(27)] "Normal baby sitting" means general care provided to a child which includes custody, control, and supervision.

(29)[(28)] "Occupational therapist" is defined by KRS 319A.010(3).

(30)[(29)] "Occupational therapy assistant" is defined by KRS 319A.010(4).

(31)[(30)] "Patient liability" means the financial amount an individual is required to contribute toward cost of care in order to maintain Medicaid eligibility.

(32)[(31)] "Physical therapist" is defined by KRS 327.010(2).

(33)[(32)] "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(34)[(33)] "Physician assistant" or "PA" is defined by KRS 311.840(3).

(35)[(34)] "Plan of care" or "POC" means a written individualized plan developed by:

(a) A Michelle P. recipient or a Michelle P. recipient's legal representative;

(b) The case manager or support broker; and

(c) Any other person designated by the Michelle P. recipient if the Michelle P. recipient designates another person.

(36)[(35)] "Plan of treatment" means a care plan used by an ADHC center.

(37)[(36)] "Psychologist" is defined by KRS 319.010(8).

(38)[(37)] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(39)[(38)] "Qualified Intellectual Disability Professional" or "QIDP" is defined by KRS 202B.010(12).

(40)[(39)] "Registered nurse" or "RN" means a person who:

(a) Meets the definition established in KRS 314.011(5); and

(b) Has one (1) year or more experience as a professional nurse.

(41)[(40)] "Representative" is defined by KRS 205.5605(6).

(42)[(41)] "SCL waiting list individual" means an individual on the Supports for Community Living (SCL) waiting list pursuant to 907 KAR 1:145, Section 7.

(43)[(42)] "Sex crime" is defined by KRS 17.165(1).

(44)[(43)] "Social worker" means a person with a bachelor's degree in social work, sociology, or a related field.

(45)[(44)] "Speech-language pathologist" is defined by KRS 334A.020(3).

(46)[(45)] "Supervisory staff" means an individual employed by the Michelle P. waiver provider who shall manage direct-care staff and who:

(a) 1.a. Is eighteen (18) years of age or older; and

b. Has a high school diploma; or

2.a. Is twenty-one (21) years of age or older; and

b. Has a minimum of one (1) year experience in providing services to individuals with an intellectual or developmental disability;

(b) Is able to adequately communicate with the recipients, staff, and family members;

(c) Has a valid Social Security number or valid work permit if not a U.S. citizen; and

(d) Has the ability to perform required record keeping.

(47)[(46)] "Support broker" means an individual chosen by a consumer from an agency designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(48)[(47)] "Support spending plan" means a plan for a consumer that identifies the:

- (a) CDO services requested;
- (b) Employee name;
- (c) Hourly wage;
- (d) Hours per month;
- (e) Monthly pay;
- (f) Taxes;
- (g) Budget allowance; and
- (h) Six (6)-month budget.

(49)[(48)] "Violent crime" is defined by KRS 17.165(3).

Section 2. Non-CDO Provider Participation. (1) In order to provide Michelle P. waiver services, excluding consumer-directed option services, a provider shall be:

- (a) Licensed in accordance with:
  - 1. 902 KAR 20:066 if an adult day health care provider;
  - 2. 902 KAR 20:078 if a group home;
  - 3. 902 KAR 20:081 if a home health service provider; or
  - 4. 902 KAR 20:091 if a community mental health center; or
- (b) Be certified by the department in accordance with 907 KAR

1:145, Section 3, if a provider type not listed in paragraph (a) of this subsection.

(2) A Michelle P. waiver service provider shall:

- (a) Provide services to Michelle P. waiver recipients:
  - 1. Directly; or
  - 2. Indirectly through a subcontractor;

(b) Comply with the following administrative regulations and program requirements:

- 1. 907 KAR 1:671;
- 2. 907 KAR 1:672; and
- 3. 907 KAR 1:673;

(c) Not enroll a Michelle P. recipient for whom the provider is unequipped or unable to provide Michelle P. waiver services; and

(d) Be permitted to accept or not accept a Michelle P. recipient.

Section 3. Maintenance of Records. (1) A Michelle P. waiver provider shall maintain:

(a) A clinical record for each Michelle P. recipient that shall contain the following:

- 1. Pertinent medical, nursing, and social history;
- 2. A comprehensive assessment entered on form MAP-351 and signed by the:
  - a. Assessment team; and
  - b. Department;
- 3. A completed MAP 109;
- 4. A copy of the MAP-350 signed by the recipient or his or her legal representative at the time of application or reapplication and each recertification thereafter;
- 5. The name of the case manager;
- 6. Documentation of all level of care determinations;
- 7. All documentation related to prior authorizations, including requests, approvals, and denials;
- 8. Documentation of each contact with, or on behalf of, a Michelle P. recipient;

9. Documentation that the Michelle P. recipient receiving ADHC services or legal representative was provided a copy of the ADHC center's posted hours of operation;

10. Documentation that the recipient or legal representative was informed of the procedure for reporting complaints; and

11. Documentation of each service provided. The documentation shall include:

- a. The date the service was provided;
- b. The duration of the service;
- c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the Michelle P. waiver recipient's home;
- d. Itemization of each service delivered;
- e. The Michelle P. recipient's arrival and departure time, excluding travel time, if the service was provided outside the recipient's home;
- f. Progress notes which shall include documentation of changes, responses, and treatments utilized to meet the Michelle P. recipient's needs; and
- g. The signature of the service provider; and

(b) Fiscal reports, service records, and incident reports regarding services provided. The reports and records shall be retained for the longer of:

1. At least six (6) years from the date that a covered service is provided; or

2. For a minor, three (3) years after the recipient reaches the age of majority under state law.

(2) Upon request, a Michelle P. provider shall make information regarding service and financial records available to the:

- (a) Department;
- (b) Kentucky Cabinet for Health and Family Services, Office of Inspector General or its designee;
- (c) United States Department for Health and Human Services or its designee;
- (d) United States Government Accountability Office or its designee;
- (e) Kentucky Office of the Auditor of Public Accounts or its designee; or
- (f) Kentucky Office of the Attorney General or its designee.

Section 4. Michelle P. Recipient Eligibility Determinations and Redeterminations. (1) A Michelle P. waiver service shall be provided to a Medicaid-eligible Michelle P. recipient who:

(a) Is determined by the department to meet the Michelle P. waiver service level of care criteria in accordance with Section 5 of this administrative regulation; and

(b) Would, without waiver services, be admitted to an ICF-IID[ICF-MR-DD] or a nursing facility.

(2) The department shall perform a Michelle P. waiver service level of care determination for each Michelle P. recipient at least once every twelve (12) months or more often if necessary.

(3) A Michelle P. waiver service shall not be provided to an individual who:

- (a) Does not require a service other than:
  - 1. An environmental and minor home adaptation;
  - 2. Case management; or
  - 3. An environmental and minor home adaptation and case management;

(b) Is an inpatient of:

- 1. A hospital;
- 2. A nursing facility; or
- 3. An ICF-IID[ICF-MR-DD];

(c) Is a resident of a licensed personal care home; or

(d) Is receiving services from another Medicaid home and community based services waiver program.

(4) A Michelle P. waiver provider shall inform a Michelle P. recipient or his legal representative of the choice to receive:

- (a) Michelle P. waiver services; or
- (b) Institutional services.

(5) An eligible Michelle P. recipient or the recipient's legal representative shall select a participating Michelle P. waiver provider from which the recipient wishes to receive Michelle P. waiver services.

(6) A Michelle P. waiver provider shall use a MAP-24 to notify the department of a Michelle P. service recipient's:

- (a) Termination from the Michelle P. waiver program; or
- (b) 1. Admission to an ICF-IID[ICF-MR-DD] or nursing facility for less than sixty (60) consecutive days; or

2. Return to the Michelle P. waiver program from an ICF-IID[ICF-MR-DD] or nursing facility within sixty (60) consecutive days;

- (c) Admission to a hospital; or
- (d) Transfer to another waiver program within the department.

(7) Involuntary termination of a service to a Michelle P. recipient by a Michelle P. provider shall require:

(a) Simultaneous notice to the recipient or legal representative, the case manager or support broker, and the department at least thirty (30) days prior to the effective date of the action, which shall include:

- 1. A statement of the intended action;
- 2. The basis for the intended action;
- 3. The authority by which the action is taken; and
- 4. The recipient's right to appeal the intended action through

the provider's appeal or grievance process;

(b) Submittal of a MAP-24 to the department at the time of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the recipient with the name, address, and telephone number of each current provider in the state;
2. Provide assistance to the recipient in making contact with another provider;
3. Arrange transportation for a requested visit to a provider site;
4. Provide a copy of pertinent information to the recipient or legal representative;
5. Ensure the health, safety, and welfare of the recipient until an appropriate placement is secured;
6. Continue to provide supports until alternative services are secured; and
7. Provide assistance to ensure a safe and effective service transition.

Section 5. Michelle P. Waiver Service Level of Care Criteria.

(1) An individual shall be determined to have met the Michelle P. waiver service level of care criteria if the individual:

(a) Requires physical or environmental management or rehabilitation and:

1. Has a developmental disability or significantly sub-average intellectual functioning;
2. Requires a protected environment while overcoming the effects of a developmental disability or sub-average intellectual functioning while:
  - a. Learning fundamental living skills;
  - b. Obtaining educational experiences which will be useful in self-supporting activities; or
  - c. Increasing awareness of his or her environment; or
3. Has a primary psychiatric diagnosis if:
  - a. Possessing care needs listed in subparagraph 1 or 2 of this paragraph;
  - b. The individual's mental care needs are adequately handled in an ICF-IID~~[ICF-MR-DD]~~; and
  - c. The individual does not require psychiatric inpatient treatment.

(b) Has a developmental disability and meets the:

1. High-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(2); or
2. Low-intensity nursing care patient status criteria pursuant to 907 KAR 1:022, Section 4(3).

(2) An individual who does not require a planned program of active treatment to attain or maintain an optimal level of functioning shall not meet the Michelle P. waiver service level of care criteria.

(3) The department shall not determine that an individual fails to meet the Michelle P. waiver service level of care criteria solely due to the individual's age, length of stay in an institution, or history of previous institutionalization if the individual meets the criteria established in subsection (1) of this section.

Section 6. Enrollment. (1) The department shall enroll an individual on a 1st priority basis if the individual:

(a) Has an urgent need pursuant to 907 KAR 1:145, section 7(7)(b), regardless of whether the individual is on the SCL waiting list; and

(b) Meets the eligibility criteria established in Section 4 of this administrative regulation.

(2) After all first priority basis individuals have been enrolled, the department shall enroll remaining SCL waiting list individuals who meet the eligibility criteria established in Section 4 of this administrative regulation in accordance with the SCL waiting list provisions established in 907 KAR 1:145, Section 7.

(3) After all individuals have been enrolled pursuant to subsections (1) and (2) of this Section, the department shall utilize a first come, first served priority basis to enroll an individual who meets the eligibility criteria established in Section 4 of this administrative regulation.

(4) The number of individuals enrolled and receiving services

~~in [department shall enroll into] the Michelle P. waiver program shall not exceed the limit of individuals established for the program by the Centers for Medicare and Medicaid Services~~~~[no more than:~~

~~(a) 3,000 individuals during the first state fiscal year (beginning July 1, 2008);~~

~~(b) A total of 4,500 individuals by the end of the second state fiscal year (June 30, 2010); and~~

~~(c) A total of 6,000 individuals by the end of the third state fiscal year (June 30, 2011)].~~

Section 7. Covered Services. (1) A Michelle P. waiver service shall:

(a) Be prior authorized by the department to ensure that the service or modification of the service meets the needs of the Michelle P. recipient;

(b) Be provided pursuant to a plan of care or, for a CDO service, pursuant to a plan of care and support spending plan;

(c) Except for a CDO service, not be provided by a member of the Michelle P. recipient's family. A CDO service may be provided by a Michelle P. recipient's family member; and

(d) Shall be accessed within sixty (60) days of the date of prior authorization.

(2) To request prior authorization, a provider shall submit a completed MAP 10, MAP 109, and MAP 351 to the department.

(3) Covered Michelle P. waiver services shall include:

(a) A comprehensive assessment which shall:

1. Be completed by the department;
2. Identify a Michelle P. waiver recipient's needs and the services the Michelle P. waiver recipient or the recipient's family cannot manage or arrange for on the recipient's behalf;
3. Evaluate a Michelle P. waiver recipient's physical health, mental health, social supports, and environment;
4. Be requested by an individual seeking Michelle P. waiver services or the individual's family, legal representative, physician, physician assistant, QDIP, or ARNP;
5. Be conducted by an assessment team; and
6. Include at least one (1) face-to-face home visit by a member of the assessment team with the Michelle P. waiver recipient and, if appropriate, the recipient's family;

(b) A reassessment service which shall:

1. Be completed by the department;
2. Determine the continuing need for Michelle P. waiver services and, if appropriate, CDO services;
3. Be performed at least every twelve (12) months;
4. Be conducted using the same procedures used in an assessment service; and
5. Not be retroactive;

(c) A case management service which:

1. Shall consist of coordinating the delivery of direct and indirect services to a Michelle P. waiver recipient;
2. Shall be provided by a case manager who shall:
  - a. Arrange for a service but not provide a service directly, except as allowed in subparagraph 8 of this paragraph;
  - b. Contact the Michelle P. waiver recipient monthly through a face-to-face visit at the Michelle P. recipient's home, in the ADHC center, or the adult day training provider's location.

c. Assure that service delivery is in accordance with a Michelle P. waiver recipient's plan of care; and

- d. Meet the requirements of subsection (4) of this section;
3. Shall not include a group conference;
4. Shall include development of a plan of care that shall:
  - a. Be completed on the MAP 109 using Person Centered Planning: Guiding Principles;
  - b. Reflect the needs of the Michelle P. recipient;
  - c. List goals, interventions, and outcomes;
  - d. Specify services needed;
  - e. Determine the amount, frequency, and duration of services;
  - f. Provide for reassessment at least every twelve (12) months;
  - g. Be developed and signed by the case manager and Michelle P. waiver recipient, family member, or legal representative; and
  - h. Be submitted to the department no later than thirty (30) calendar days after receiving the department's approval of the Michelle P. waiver service level of care;

5. Shall include documentation with a detailed monthly summary note which includes:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
- c. The signature, date of signature, and title of the individual preparing the note; and
- d. Documentation of at least one (1) face-to-face meeting between the case manager and Michelle P. waiver recipient, family member, or legal representative;

6. Shall include requiring a Michelle P. recipient or legal representative to sign a MAP-350 form at the time of application or reapplication and at each recertification to document that the individual was informed of the choice to receive Michelle P. waiver or institutional services; and

7. Shall not be provided to a recipient by an agency if the agency provides any other Michelle P. waiver service to the recipient[~~, except as allowed in subparagraph 8 of this paragraph; and~~

~~8. Contingent upon approval by the Centers for Medicare and Medicaid Services and expiring January 1, 2011, may be provided by an agency which also provides any other Michelle P. waiver service to the recipient if the agency meets the provider qualifications established in Section 2 of this administrative regulation and:~~

~~a. Provided case management to the recipient in another of the department's waiver programs prior to the establishment of the Michelle P. waiver service program; or~~

~~b. Provided other services via the Cabinet for Health and Family Services to the recipient prior to the establishment of the Michelle P. waiver service program].~~

(d) A homemaker service which shall consist of general household activities and shall:

1. Be provided by direct-care staff;
2. Be provided to a Michelle P. waiver recipient:
- a. Who is functionally unable, but would normally perform age-appropriate homemaker tasks; and
- b. If the caregiver regularly responsible for homemaker activities is temporarily absent or functionally unable to manage the homemaking activities; and
3. Include documentation with a detailed note which shall include:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
- c. The signature, date of signature, and title of the individual preparing the note;

(e) A personal care service which shall:

1. Be age appropriate;
2. Consist of assisting a recipient with eating, bathing, dressing, personal hygiene, or other activities of daily living;
3. Be provided by direct-care staff;
4. Be provided to a Michelle P. recipient:
- a. Who does not need highly skilled or technical care;
- b. For whom services are essential to the recipient's health and welfare and not for the recipient's family; and
- c. Who needs assistance with age-appropriate activities of daily living; and

5. Include documentation with a detailed note which shall include:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
- c. The signature, date of signature, and title of the individual preparing the note; and
- d. The beginning and ending time of service;

(f) An attendant care service which shall consist of hands-on care that is:

1. Provided by direct-care staff to a Michelle P. waiver recipient who:

a. Is medically stable but functionally dependent and requires care or supervision twenty-four (24) hours per day; and

b. Has a family member or other primary caretaker who is employed and not able to provide care during working hours;

2. Not of a general housekeeping nature;

3. Not provided to a Michelle P. waiver recipient who is receiving any of the following Michelle P. waiver services:

- a. Personal care;
- b. Homemaker;
- c. ADHC;
- d. Adult day training;
- e. Community living supports; or
- f. Supported employment; and

4. Include documentation with a detailed note which shall include:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
- c. The signature, date of signature, and title of the individual preparing the note; and
- d. Beginning and ending time of service;

(g) A respite care service which shall be short term care based on the absence or need for relief of the primary caretaker and be:

1. Provided by direct-care staff who provide services at a level which appropriately and safely meet the medical needs of the Michelle P. waiver recipient;

2. Provided to a Michelle P. waiver recipient who has care needs beyond normal baby sitting;

3. Used no less than every six (6) months;

4. Provided in accordance with 902 KAR 20:066, Section 2(1)(b)10a through c, if provided to a child under age 21 (twenty-one) in an ADHC center; and

5. Include documentation with a detailed note which shall include:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care;
- c. The signature, date of signature, and title of the individual preparing the note; and
- d. The beginning and ending time of service;

(h) An environmental and minor home adaptation service which shall be a physical adaptation to a home that is necessary to ensure the health, welfare, and safety of a Michelle P. waiver recipient and which shall:

1. Meet all applicable safety and local building codes;
2. Relate strictly to the Michelle P. waiver recipient's disability and needs;
3. Exclude an adaptation or improvement to a home that has no direct medical or remedial benefit to the Michelle P. waiver recipient;
4. Be submitted on form MAP-95 for prior authorization; and
5. Include documentation with a detailed note which shall include:

- a. The month, day, and year for the time period each note covers;
- b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and
- c. The signature, date of signature, and title of the individual preparing the note;

(i) Occupational therapy which shall be:

1. A physician ordered evaluation of a Michelle P. waiver recipient's level of functioning by applying diagnostic and prognostic tests;
2. Physician-ordered services in a specified amount and duration to guide a Michelle P. waiver recipient in the use of therapeutic, creative, and self-care activities to assist the recipient in obtaining the highest possible level of functioning;
3. Training of other Michelle P. waiver providers on improving the level of functioning;
4. Exclusive of maintenance or the prevention of regression;
5. Provided by an occupational therapist or an occupational

therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and

6. Documented with a detailed staff note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(j) Physical therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient by applying muscle, joint, and functional ability tests;

2. Be physician-ordered treatment in a specified amount and duration to assist a Michelle P. waiver recipient in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be exclusive of maintenance or the prevention of regression;

5. Be provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:053; and

6. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression or lack of progression toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(k) Speech therapy which shall:

1. Be a physician-ordered evaluation of a Michelle P. waiver recipient with a speech or language disorder;

2. Be a physician-ordered rehabilitative service in a specified amount and duration to assist a Michelle P. waiver recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Include training of other Michelle P. waiver providers on improving the level of functioning;

4. Be provided by a speech-language pathologist; and

5. Be documented with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care; and

c. The signature, date of signature, and title of the individual preparing the note;

(l) An adult day training service which shall:

1. Support the Michelle P. waiver recipient in daily, meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a community setting which may:

a. Be a fixed location; or

b. Occur in public venues;

4. Not be diversional in nature;

5. If provided on site:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the recipient for work or community participation; or

c. Prepare the recipient for transition from school to work or adult support services;

6. If provided off site:

a. Include services provided in a variety of community settings;

b. Provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Be designed to result in increased ability to access community resources without paid supports;

d. Provide the opportunity for the recipient to be involved with

other members of the general population; and

e. Be provided as:

(i) An enclave or group approach to training in which recipients work as a group or are dispersed individually throughout an integrated work setting with people without disabilities;

(ii) A mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; or

(iii) An entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization, be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that an adult day training service provider conduct, at least annually, an orientation informing the recipient of supported employment and other competitive opportunities in the community;

9. Be provided at a time mutually agreed to by the recipient and Michelle P. waiver provider;

10.a. Be provided to recipients age twenty-two (22) or older; or

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services; and

11. Be documented with:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(m) A supported employment service which shall:

1. Be intensive, ongoing support for a Michelle P. waiver recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Include attending to a recipient's personal care needs;

3. Be provided in a variety of settings;

4. Be provided on a one-to-one basis;

5. Be unavailable under a program funded by either 29 U.S.C. Chapter 16 or 34 C.F.R. Subtitle B, Chapter III (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the Michelle P. waiver recipient's file;

6. Exclude work performed directly for the supported employment provider;

7. Be provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

8. Be documented by:

a. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the note; and

b. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service;

(n) A behavioral support service which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the Michelle P. waiver recipient to

learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the Michelle P. waiver recipient's behavior which shall include:

- a. An analysis of the potential communicative intent of the behavior;
  - b. The history of reinforcement for the behavior;
  - c. Critical variables that preceded the behavior;
  - d. Effects of different situations on the behavior; and
  - e. A hypothesis regarding the motivation, purpose, and factors which maintain the behavior;
4. Include the development of a behavioral support plan which shall:

- a. Be developed by the behavioral specialist;
- b. Be implemented by Michelle P. waiver provider staff in all relevant environments and activities;
- c. Be revised as necessary;
- d. Define the techniques and procedures used;
- e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;
- f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;
- g. Reflect the use of positive approaches; and
- h. Prohibit the use of restraints, seclusion, corporal punishment, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other Michelle P. waiver providers concerning implementation of the behavioral support plan;

6. Include the monitoring of a Michelle P. recipient's progress which shall be accomplished by:

- a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and
- b. The reports of a Michelle P. waiver provider involved in implementing the behavior support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist; and

9. Be documented by a detailed staff note which shall include:

- a. The date of service;
- b. The beginning and ending time; and
- c. The signature, date of signature, and title of the behavioral specialist;

(o) An ADHC service which shall:

1. Be provided to a Michelle P. waiver recipient who is at least twenty-one (21) years of age;

2. Include the following basic services and necessities provided to Medicaid waiver recipients during the posted hours of operation:

a. Skilled nursing services provided by an RN or LPN, including ostomy care, urinary catheter care, decubitus care, tube feeding, venipuncture, insulin injections, tracheotomy care, or medical monitoring;

b. Meal service corresponding with hours of operation with a minimum of one (1) meal per day and therapeutic diets as required;

c. Snacks;

d. Supervision by an RN;

e. Age and diagnosis appropriate daily activities; and

f. Routine services that meet the daily personal and health care needs of a Michelle P. waiver recipient, including:

(i) Monitoring of vital signs;

(ii) Assistance with activities of daily living; and

(iii) Monitoring and supervision of self-administered medications, therapeutic programs, and incidental supplies and equipment needed for use by a Michelle P. waiver recipient;

3. Include developing, implementing, and maintaining nursing policies for nursing or medical procedures performed in the ADHC center;

4. Include respite care services pursuant to paragraph (g) of this subsection;

5. Be provided to a Michelle P. waiver recipient by the health team in an ADHC center which may include:

- a. A physician;
- b. A physician assistant;
- c. An ARNP;
- d. An RN;
- e. An LPN;
- f. An activities director;
- g. A physical therapist;
- h. A physical therapist assistant;
- i. An occupational therapist;
- j. An occupational therapist assistant;
- k. A speech pathologist;
- l. A social worker;
- m. A nutritionist;
- n. A health aide;
- o. An LPCC;
- p. An LMFT;
- q. A certified psychologist with autonomous functioning; or
- r. A licensed psychological practitioner; and

6. Be provided pursuant to a plan of treatment. The plan of treatment shall:

a. Be developed and signed by each member of the plan of treatment team which shall include the recipient or a legal representative of the recipient;

b. Include pertinent diagnoses, mental status, services required, frequency of visits to the ADHC center, prognosis, rehabilitation potential, functional limitation, activities permitted, nutritional requirements, medication, treatment, safety measures to protect against injury, instructions for timely discharge, and other pertinent information; and

c. Be developed annually from information on the MAP 351 and revised as needed; and

(p) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

- a. Routine household tasks and maintenance;
- b. Activities of daily living;
- c. Personal hygiene;
- d. Shopping;
- e. Money management;
- f. Medication management;
- g. Socialization;
- h. Relationship building;
- i. Leisure choices;
- j. Participation in community activities;
- k. Therapeutic goals; or
- l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-one basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature, and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, and supported employment.

(4) A case manager shall:

(a) Have a bachelor's degree from an accredited institution in a

human services field and be supervised by:

1. A QIDP;
2. A registered nurse who has at least two (2) years of experience working with individuals with an intellectual or a development disability;
3. An individual with a bachelor's degree in a human service field who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
4. A qualified social worker who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
5. A licensed marriage and family therapist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
6. A licensed professional clinical counselor who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
7. A certified psychologist who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability; or
8. A licensed psychological practitioner who has at least two (2) years of experience working with individuals with an intellectual or a developmental disability;
  - (b) Be an RN;
  - (c) Be an LPN;
  - (d) Be a qualified social worker;
  - (e) Be an LMFT;
  - (f) Be an LPCC;
  - (g) Be a certified psychologist; or
  - (h) Be a licensed psychological practitioner.

Section 8. Consumer-Directed Option. (1) Covered services and supports provided to a Michelle P. waiver recipient participating in CDO shall be nonmedical and include:

- (a) A home and community support service which shall:
  1. Be available only under the consumer-directed option;
  2. Be provided in the consumer's home or in the community;
  3. Be based upon therapeutic goals and not diversional in nature;
  4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; and
  5. Include:
    - a. Assistance, support or training in activities including meal preparation, laundry, or routine household care of maintenance;
    - b. Activities of daily living including bathing, eating, dressing, personal hygiene, shopping, or the use of money;
    - c. Reminding, observing, or monitoring of medications;
    - d. Nonmedical care which does not require a nurse of physician intervention;
    - e. Respite; or
    - f. Socialization, relationship building, leisure choice or participation in generic community activities.
  - (b) Goods and services which shall:
    1. Be individualized;
    2. Be utilized to reduce the need for personal care or to enhance independence within the home or community of the recipient;
    3. Not include experimental goods or services; and
    4. Not include chemical or physical restraints;
  - (c) A community day support service which shall:
    1. Be available only under the consumer-directed option;
    2. Be provided in a community setting;
    3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure, or retirement activities;
    4. Be based upon therapeutic goals and not be diversional in nature; and
    5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO Michelle P. waiver services; or
    - (d) Financial management which shall:

1. Include managing, directing, or dispersing a consumer's funds identified in the consumer's approved CDO budget;
2. Include payroll processing associated with the individuals hired by a consumer or consumer's representative;
3. Include withholding local, state, and federal taxes and making payments to appropriate tax authorities on behalf of a consumer;
4. Be performed by an entity:
  - a. Enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and
  - b. With at least two (2) years of experience working with individuals possessing the same or similar level of care needs as those referenced in Section 5 of this administrative regulation;
5. Include preparing fiscal accounting and expenditure reports for:
  - a. A consumer or consumer's representative; and
  - b. The department.
- (2) To be covered, a CDO service shall be specified in a plan of care.
- (3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or similar service provided in a non-CDO Michelle P waiver setting, except that respite may be provided in excess of the cap established in Section 12(2) of this administrative regulation if:
  - (a) Necessary per the consumer's plan of care; and
  - (b) Approved by the department in accordance with subsection (13) of this section.
- (4) A consumer, including a married consumer, shall choose providers and a consumer's choice shall be reflected or documented in the plan of care.
- (5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:
  - (a) Be twenty-one (21) years of age or older;
  - (b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
  - (c) Be appointed by the consumer on a MAP 2000 form.
- (6) A consumer may voluntarily terminate CDO services by completing a MAP 2000 and submitting it to the support broker.
- (7) The department shall immediately terminate a consumer from CDO services if:
  - (a) Imminent danger to the consumer's health, safety, or welfare exists;
  - (b) The consumer fails to pay patient liability;
  - (c) The recipient's plan of care indicates he or she requires more hours of service than the program can provide; thus, jeopardizing the recipient's safety and welfare due to being left alone without a caregiver present; or
  - (d) The recipient, caregiver, family, or guardian threaten or intimidate a support broker or other CDO staff.
- (8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.
- (9) Prior to a consumer's termination from CDO services, the support broker shall:
  - (a) Notify the assessment or reassessment service provider of potential termination;
  - (b) Assist the consumer in developing a resolution and prevention plan;
  - (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;
  - (d) Complete, and submit to the department, a MAP 2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
  - (e) Assist the consumer in transitioning back to traditional Michelle P. waiver services.
- (10) Upon an involuntary termination of CDO services, the department shall:
  - (a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and
  - (b) Inform the consumer of the right to appeal the department's decision in accordance with Section 13 of this administrative regulation.



(11) A CDO provider shall:

- (a) Be selected by the consumer;
- (b) Submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
- (c) Be eighteen (18) years of age or older;
- (d) Be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;
- (e) Be able to communicate effectively with the consumer, consumer representative, or family;
- (f) Be able to understand and carry out instructions;
- (g) Be able to keep records as required by the consumer;
- (h) Submit to a criminal background check;
- (i) Submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;
- (j) Not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) or (3);
- (k) Complete training on the reporting of abuse, neglect, or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
- (l) Be approved by the department;
- (m) Maintain and submit timesheets documenting hours worked; and
- (n) Be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of children who receive waiver services.

(13)(a) The department shall establish a twelve (12) month budget for a consumer based on the consumer's plan of care.

(b) A consumer's twelve (12) month budget shall not exceed \$40,000 unless:

- 1. The consumer's support broker requests a budget adjustment to a level higher than \$40,000; and
- 2. The department approves the adjustment.

(c) The department shall consider the following factors in determining whether to grant a twelve (12) month budget adjustment:

- 1. If the proposed services are necessary to prevent imminent institutionalization;
- 2. The cost effectiveness of the proposed services;
- 3. Protection of the consumer's health, safety, and welfare; and
- 4. If a significant change has occurred in the recipient's:
  - a. Physical condition, resulting in additional loss of function or limitations to activities of daily living and instrumental activities of daily living;
  - b. Natural support system; or
  - c. Environmental living arrangement, resulting in the recipient's relocation.

(d) A consumer's twelve (12) month budget may encompass a service or any combination of services listed in subsection (1) of this section, if each service is established in the consumer's plan of care and approved by the department.

(14) Unless approved by the department pursuant to subsection (13)(a) through (c) of this section, if a CDO service is expanded to a point in which expansion necessitates a twelve (12) month budget increase, the entire service shall only be covered via traditional (non-CDO) waiver services.

(15) A support broker shall:

- (a) Provide needed assistance to a consumer with any aspect of CDO or blended services;
- (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
- (c) Comply with all applicable federal and state laws and requirements;
- (d) Continually monitor a consumer's health, safety, and welfare; and
- (e) Complete or revise a plan of care using person-centered planning principles.

(16)(a) A support broker or case manager may conduct an assessment or reassessment for a CDO participant; and

(b) A CDO assessment or reassessment performed by a support broker shall comply with the assessment or reassessment provisions established in this administrative regulation.

Section 9. Annual Expenditure Limit Per Individual. (1) The department shall have an annual expenditure limit per individual receiving services via this administrative regulation.

(2) The limit referenced in subsection (1) of this section shall:

- (a) Be an overall limit applied to all services whether CDO services, Michelle P. waiver services not provided via CDO, or a combination of CDO and Michelle P. waiver services; and
- (b) Shall equal \$63,000 per year.

Section 10. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

- 1. Be minor in nature and not create a serious consequence;
- 2. Not require an investigation by the provider agency;
- 3. Be reported to the case manager or support broker within twenty-four (24) hours;
- 4. Be reported to the guardian as directed by the guardian; and
- 5. Be retained on file at the provider and case management or support brokerage agency.

(b) A class II incident which shall:

- 1. Be serious in nature;
- 2. Involve the use of physical or chemical restraints;
- 3. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery;
- 4. Be reported by the provider agency to:
  - a. The case manager or support broker within twenty-four (24) hours;

- b. The guardian within twenty-four (24) hours;

- c. The department within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

- 1.a. Be grave in nature;
- b. Involve suspected abuse, neglect, or exploitation;
- c. Involve a medication error which requires a medical intervention; or
- d. Be a death.
- 2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and
- 3. Be reported by the provider agency to:
  - a. The case manager or support broker within eight (8) hours of discovery;
  - b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209 or 620.030;
  - c. The guardian within eight (8) hours of discovery; and
  - d. The department within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. on a weekday or occurs on a weekend or holiday, notification to the department shall occur on the following business day.

(3) Documentation with a complete written report for a death shall include:

- (a) The recipient's current plan of care;
- (b) The recipient's current list of prescribed medications including pro re nata (PRN) medications;
- (c) The recipient's current crisis plan;
- (d) Medication administration review forms for the current and previous month;
- (e) Staff notes from the current and previous month including details of physician and emergency room visits;
- (f) Any additional information requested by the department necessary to determine if a corrective action needs to be taken by the Cabinet for Health and Family Services against the provider;
- (g) A coroner's report when received; and
- (h) If performed, an autopsy report when received.

(4) All medication errors shall be reported to the department on

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a Michelle P. Waiver Medication Error Report by the 15th of the following month.

Section 11. Michelle P. Waiver Program Waiting List. (1)(a) If a slot is not available for an individual to enroll in the Michelle P. Waiver Program at the time of applying for the program, the individual shall be placed on a statewide Michelle P. Waiver Program waiting list:

1. In accordance with subsection (2) of this section; and
2. Which shall be maintained by the department.

(b) Each slot for the Michelle P. Waiver Program shall be contingent upon:

1. Biennium budget funding;
2. Federal financial participation; and
3. Centers for Medicare and Medicaid Services approval.

(2) For an individual to be placed on the Michelle P. Waiver Program waiting list, the:

(a) Individual shall submit to the department a completed Application for MPW Services; and

(b)1. Department shall place the individual on the waiting list if the department confirms that the MAP-621, Application for MPW Services, has been correctly completed.

2. If the department determines that a MAP-621, Application for MPW Services, has not been completed correctly, the department shall return the form to the applicant notifying the applicant of the incorrectness or missing information.

(3) Individuals shall be placed on the Michelle P. Waiver Program waiting list in the chronological order that the application is received and validated by the department.

(4) The department shall send a written notice of placement on the Michelle P. Waiver Program waiting list to the:

- (a) Applicant; or
- (b) Applicant's legal representative.

(5) At least annually, the department shall contact each individual, or individual's legal representative, on the Michelle P. Waiver Program waiting list to:

(a) Verify the accuracy of the individual's information; and  
(b) Verify whether the individual wishes to continue to pursue enrollment in the Michelle P. Waiver Program.

(6) The department shall remove an individual from the Michelle P. Waiver Program waiting list if:

(a) After a documented attempt, the department is unable to contact or locate the individual or the individual's legal representative;

(b) The individual is deceased; or

(c) The department notifies the individual or the individual's legal representative of potential funding approved to enroll the individual in the Michelle P. Waiver Program and the individual or individual's legal representative:

1. Declines the potential funding for enrollment in the program; and

2. Does not request to remain on the Michelle P. Waiver Program waiting list.

(7) If, after being notified by the department of potential funding approved to enroll the individual in the Michelle P. Waiver Program, the individual or individual's legal representative declines the potential funding but requests to remain on the Michelle P. Waiver Program waiting list, the individual shall:

- (a) Lose his or her current position on the waiting list; and
- (b) Be moved to the bottom of the waiting list.

(8) If the department removes an individual from the Michelle P. Waiver Program waiting list pursuant to this section, the department shall send written notice of the removal to:

(a) The individual or the individual's legal representative; and  
(b) The individual's Michelle P. Waiver Program coordination provider if the individual has a Michelle P. Waiver Program coordination provider.

(9) The removal of an individual from the Michelle P. Waiver Program waiting list shall not preclude the individual from applying for Michelle P. Waiver Program participation in the future.

Section 12. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and

documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A home health provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, and contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 13.[12.] Reimbursement. (1) The following Michelle P. waiver services, alone or in any combination, shall be limited to forty (40) hours per calendar week:

- (a) Homemaker;
- (b) Personal care;
- (c) Attendant care;
- (d) Supported employment;
- (e) Adult day health care;
- (f) Adult day training;
- (g) Community living supports;
- (h) Physical therapy;
- (i) Occupational therapy;
- (j) Speech therapy; and
- (k) Behavior supports.

(2) Respite services shall not exceed \$4,000 per member, per calendar year.

(3) Environmental and minor home adaptation services shall not exceed \$500 per member, per calendar year.

(4)(a) The department shall reimburse for a Michelle P. waiver service at the lesser of billed charges or the fixed upper payment rate for each unit of service.

(b) The following rates shall be the fixed upper payment rate limits:

Service	Fixed Payment Limit	Upper Rate	Unit of Service
Case Management	\$50.00		15 minutes
Respite	\$4,000	per calendar year	15 minutes
Homemaker	\$6.50		15 minutes
Personal Care	\$7.50		15 minutes
Attendant Care	\$2.90		15 minutes
Supported Employment	\$5.54		15 minutes
Adult Day Health Care	\$2.75		15 minutes
Adult Day Training	\$2.75		15 minutes
Community Living Supports	\$5.54		15 minutes
Physical Therapy	\$22.17		15 minutes
Occupational Therapy	\$22.17		15 minutes
Speech Therapy	\$22.17		15 minutes
Behavior Supports	\$33.25		15 minutes
Environmental and Minor Home Adaptation	\$500 per calendar year		
Financial Management	\$12.50 (not to exceed eight (8) units or \$100.00 per month)		15 minutes
Support Broker	\$265.00		One (1) month

Section 14. Federal Financial Participation and Approval. The department's coverage and reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage and reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement.

Section 15.[13.] Appeal Rights. An appeal of a department determination regarding Michelle P. waiver service level of care or services to a Michelle P. waiver recipient or a consumer shall be in accordance with 907 KAR 1:563.

Section 16.[14.] Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Person Centered Planning: Guiding Principles", March 2005[~~edition~~];
- (b) "MAP-24, The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services Memorandum", February 2001[~~edition~~];
- (c)[(f)] "MAP-95 Request for Equipment Form", June 2007[~~edition~~];
- (d)[(g)] "MAP 109, Plan of Care/Prior Authorization for Waiver Services", March 2007[~~edition~~];
- (e)[(h)] "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000[~~edition~~];
- (f)[(i)] "MAP-351, The Department for Medicaid Services, Medicaid Waiver Assessment", March 2007[~~edition~~];
- (g)[(j)] "MAP 2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007[~~edition~~];
- (h)[(k)] "MAP-10, Waiver Services", March 2007[~~edition~~];
- (i)[(l)] "The Kentucky Consumer Directed Option Employee Provider Contract", May 4, 2007[~~edition~~];
- (j)[(m)] "Incident Report Form", April 2, 2007[~~edition~~]; and
- (k)[(n)] "Michelle P. Waiver Medication Error Report", November 19, 2008; and
- (l) "MAP-621, Michelle P. Waiver Application Form", January 2014[~~edition~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LAWRENCE KISSNER, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: April 28, 2014

FILED WITH LRC: May 15, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014 at 9:00 a.m. in Suite B of the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing June 16, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) coverage and reimbursement provisions requirements regarding Michelle P. waiver program services. The Michelle P. waiver program is a program which enables individuals who have care needs that qualify them for receiving services in an intermediate care facility for individuals with an intellectual disability (ICF IID) to reside in and receive services in a community setting rather than in an institutional setting.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by establishing DMS's coverage and reimbursement provisions and requirements regarding Michelle P. Waiver Program services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes that the number of Michelle P. Waiver Program participants shall not exceed the limited established by the Centers for Medicare and Medicaid Services (CMS); creates a waiting list for individuals applying to receive Michelle P. Waiver Program services along with provisions and requirements regarding the waiting list.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that DMS receives federal funding associated with the expenditures for every individual who receives Michelle P. Waiver Program services and to ensure DMS compliance with the requirements established for the program by the federal agency (CMS) which provides funding for and authorizes the program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring that this Medicaid waiver program is approved by the federal government and funded with federal funds.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by ensuring that this Medicaid waiver program is approved by the federal government and funded with federal funds.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 284 providers participating in the Michelle P. Waiver Program and over 9,500 individuals receiving services via the program. DMS estimates that the number of individuals who could currently qualify to be placed on the program's waiting list could be 283.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals (or legal representatives of individuals) who wish to be placed on the Michelle P. Waiver Program waiting list will need to complete an application form and submit it to DMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in

question (3). The amendment imposes no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals who wish to receive Michelle P. Waiver Program services will benefit from the presence of a waiting list which designates the individual's specific place on the list rather than having to apply and continually reapply with no guarantee of having a spot in line.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The amendment is not expected to increase Medicaid Program costs. The 2013 calendar year costs for the Michelle P. Waiver program was \$213, 632, 087 (federal and state funds combined.)

(b) On a continuing basis: The amendment is not expected to increase Medicaid Program costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the amendment applies equally to all regulated entities/individuals.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not anticipated to generate a higher level of revenues for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The response in (a) above also applies here.

(c) How much will it cost to administer this program for the first year? The amendment is not expected to increase Medicaid program costs.

(d) How much will it cost to administer this program for subsequent years? The response in (c) above also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

#### 921 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170(1), 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601-619

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. KRS 205.200 requires the Cabinet for Health and Family Services to administer the public assistance program in conformity with the Public Assistance Titles of the Social Security Act, its amendments, and other federal acts and regulations, including 42 U.S.C. 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1).

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Health and Family Services to administer an oath or affirmation to an applicant or recipient:

- (1) Family support specialist III;
- (2) Case management specialist III;
- (3) Program specialist;
- (4) Field services supervisor;
- (5) Service region administrator associate; and
- (6) Service region administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

(1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:

- (a) Lost;
- (b) Misplaced; or
- (c) Stolen;
- (2) Request a replacement check; or
- (3) View a check endorsement.

Section 3. Process. (1) A PAFS-60, Affidavit, shall be used if:

(a) A check is reported lost or stolen to request a replacement check within twelve (12) months of intended receipt; or

(b) A check endorsement is viewed.

(2) If the payee reports ~~non-receipt~~~~[nonreceipt]~~, loss, or theft of a check, the payee shall come into the office to complete a PAFS-60 within four (4) work days of reporting ~~non-receipt~~~~[nonreceipt]~~ of the check in effort to place a stop payment on the check.

(3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

(a) The payee shall view the endorsement; and

(b) If the signature is not that of the payee, the payee shall sign the PAFS-60 stating the:

1. Signature on the photocopy is not the payee's signature; and
2. Payee received no benefit from the cashing of the check.

Section 4. Incorporation by Reference. (1) The "PAFS-60, Affidavit", 9/14~~edition 3/13~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through

Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner  
AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1).

(b) The necessity of this administrative regulation: This administrative regulation is needed to establish the designation of specific employees to administer an oath or affirmation in the event a cash benefit check is lost or stolen.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its designation of specific employees to administer oaths and affirmations for a lost or stolen cash benefit check.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by designating specific employees to administer oaths and affirmations when a cash benefit check is reported stolen or lost.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How this administrative regulation change this existing administrative regulation: The amendment to this administrative regulation will update the nondiscrimination statement on form PAFS-60, Affidavit, to meet the requirements established by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), the federal administering agency for the Supplemental Nutrition Assistance Program (SNAP) (a.k.a., Food Stamps). The form is used in multiple public assistance programs, including the SNAP Employment and Training Program. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the non-discrimination statement included on incorporated material conforms to federal requirements. FNS revised the nondiscrimination statement in 2013. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect families who are receiving cash assistance from the Kentucky Transitional Assistance Program (K-TAP), Kinship Care, Family Alternative Diversion (FAD), Work Incentive (WIN), Kentucky Works Program (KWP) supportive services, State Supplementation, and SNAP Employment and Training Program (E&T). In December 2013, there were 23,290 K-TAP families, 6,200 Kinship Care families, 36 FAD families, 938 WIN recipients, 6,212 transportation payment recipients, 62 supportive services fee payments, 145 other supportive services payments, and 3,034 State Supplementation recipients. At this time, there are no individuals participating in SNAP E&T.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have no new actions to take to comply with the amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material utilized in multiple public assistance programs administered by DCBS.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a new initial cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a new continuing cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding will be Temporary Assistance for Needy Families (TANF) block grant funds and state funds utilized for federal match and maintenance of effort. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 to 619
2. State compliance standards. KRS 194A.50(1), 205.170,

205.200

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.170(1), 205.200, 42 U.S.C. 601 to 619

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This program has been operational for numerous years. The administrative regulation will not generate any revenues in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will not generate additional revenues in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### **CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)**

#### **921 KAR 3:030. Application process.**

RELATES TO: KRS 116.048, 7 C.F.R. 273.2, 273.10,[42 U.S.C. 1973gg-5,] 7 U.S.C. 2020(e)(2)(B)(ii), (iii), (iv), 42 U.S.C. 1973gg-5, 2000d, Pres. EO 13166

STATUTORY AUTHORITY: KRS 116.048(1), 194A.050(1), 7 C.F.R. 271.4, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate

with other state and federal agencies for the proper administration of the cabinet and its programs. 7 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribes the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 U.S.C. 1973gg-5. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office in person during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

(a) Deaf; or

(b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d and Presidential EO 13166, interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and related documents are received by the DCBS office, as specified in Section 3(1) of this administrative regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative

regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards specified in 921 KAR 2:035, Section 3 [4].

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

- (a) The entire household is institutionalized;
- (b) A household member is ineligible due to a drug-related felony conviction;
- (c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or
- (d) The head of the household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under Temporary Assistance for Needy Families Block Grant (TANF) shall be considered categorically eligible unless:

- (a) The entire household is institutionalized;
- (b) A household member is ineligible due to a drug-related felony conviction;
- (c) A household member is disqualified due to an intentional program violation specified in 921 KAR 3:010; or
- (d) The head of household is disqualified for failure to comply with the work requirements specified in 921 KAR 3:042.

(5) If verified by the program or service conferring categorical eligibility status, a categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
- (b) Gross and net income;
- (c) Social Security number;
- (d) Sponsored alien information; and
- (e) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP as specified in Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 U.S.C. 1973gg-5, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

- (a) Age eighteen (18) or over; and
- (b) Not registered to vote or not registered to vote at his current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or
- (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FS-1, Application for SNAP", 9/14[~~edition 3/43~~]; and
- (b) "PAFS-706, Voter Registration Rights and Declination", [~~edition~~] 8/10.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort,

Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform application standards for SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing an application process for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing procedures used by the cabinet in the administration of SNAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation will revise material incorporated by reference, FS-1, Application for SNAP, to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. Technical corrections were also made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the nondiscrimination statement included on incorporated material conforms to federal requirements. FNS revised the nondiscrimination statement in 2013. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their

rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. Approximately 825,684 individuals in 398,545 households participated in SNAP in Kentucky during February 2014. In March 2014, over 47,000 SNAP applications were received.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and does not have a new initial cost to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and does not have a new continuing cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.2, 273.10, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5, 42 U.S.C. 2000d, Pres. EO 13166

2. State compliance standards. KRS 116.048, 194A.050 (1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment to this administrative regulation will impose no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 116.048, 194A.050 (1), 7 C.F.R. 271.4, 273.2, 273.10, 7 U.S.C. 2020(e)(2)(B), 7 U.S.C. 2011-2029, 42 U.S.C. 1973gg-5, 42 U.S.C. 2000d, Pres. EO 13166

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue and will not generate any additional revenue during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue and will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This amendment will not require any additional costs in the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES

##### Department for Community Based Services

##### Division of Family Support

##### (Amendment)

#### 921 KAR 3:042. Supplemental Nutrition[Nutritional] Assistance Program Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutrition[Nutritional] Assistance Program (SNAP) Employment and Training Program. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the SNAP Employment and Training Program (E&T).

Section 1. Definitions. (1) "Exempt" means excused by the agency from participation in the E&T.

(2) "Vocational Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement.

(3) "Work Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement.

Section 2. Work Registration. (1) Unless exempt from work



requirements as specified in subsection (4) of this section, a household member shall register for work:

- (a) At the time of initial application for SNAP; and
  - (b) Every twelve (12) months following the initial application.
- (2) Work registration shall be completed by the:
- (a) Member required to register; or
  - (b) Person making application for the household.
- (3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person may be an:
- (a) Ineligible alien; or
  - (b) Individual disqualified for:
    1. Refusing to provide or apply for a Social Security number; or
    2. An intentional program violation.
  - (c) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.
- (5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance[e] with 7 C.F.R. 273.7(b)(2).
- (6) After registering for work, a nonexempt household member shall:
- (a) Respond to a cabinet request for additional information regarding employment status or availability for work;
  - (b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment as specified in 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or
  - (c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program, if assigned by the cabinet.
- (7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035, shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).
- (8) The E&T worker shall explain to the SNAP applicant the:
- (a) Work requirements for each nonexempt household member;
  - (b) Rights and responsibilities of the work-registered household members; and
  - (c) Consequences of failing to comply.

Section 3. E&T Participation. (1) An individual subject to the work requirement of 921 KAR 3:025, Section 3(8) shall participate in the E&T Program.

- (2) An E&T participant shall:
  - (a) Attend and complete an initial assessment interview;
  - (b) Be placed in:
    1. VEST; or
    2. WEP; and
  - (c) Complete and return to the cabinet a FSET-108, Job Search Contact Report, or a FSET-145, Employment and Training Program Activity Report, in order to verify participation.
- (3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:
  - (a) Incurs or plans to incur a transportation expense in order to participate; and
  - (b) Completes and returns to the cabinet a FSET-108 or a FSET-145 stating the anticipated need.

Section 4. Components. (1) A county offering the E&T Program shall offer the following services and activities:

- (a) The VEST Program consisting of:
  1. Vocational school; or
  2. On-the-job training; and
- (b) The WEP Program consisting of:
  1. Job search; and
  2. Work placement.
- (2) An individual participating in VEST shall:
  - (a) Attend training courses for at least twenty (20) hours per week; and
  - (b) Participate in the WEP component until a VEST placement is available.
- (3) An individual participating in WEP shall:
  - (a) Complete an initial assessment and develop an employability plan;

- (b) Participate in the initial thirty (30) days of job search;
- (c) Complete and file with the cabinet the FSET-108;
- (d) Provide written verification by the WEP provider of E&T Program activities to the cabinet; and
- (e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:
  1. Accepting the offer of a work site placement; and
  2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.
- (4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined by the participant's monthly SNAP allotment divided by the current federal minimum wage.
- (5) If the SNAP household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:
  - (a) SNAP allotment by the number of individuals who are subject to the work requirement; and
  - (b) Individual pro rata share of the SNAP allotment by the current federal minimum wage.

Section 5. Conciliation. (1) If a participant fails to comply with the E&T Program:

- (a) The participant shall be mailed a FSET-102, Conciliation Contact and Request for Information form; and
  - (b) A conciliation period shall be initiated.
- (2) The conciliation period shall be used to:
- (a) Determine the reason for the noncompliance; and
  - (b) Allow the participant the opportunity to resolve the problem in order to continue participation.
- (3) Conciliation shall last for fifteen (15) days, during which time the E&T worker shall:
- (a) Determine if the participant demonstrates good cause for noncompliance;
  - (b) Encourage the participant to resume an E&T Program activity; or
  - (c) Recommend disqualification for failure to comply with program requirements, if the worker determines that there was no good cause for the participant's failure to comply.
- (4) If the participant resumes the E&T Program activity, a disqualification shall not be imposed.
- (5) If conciliation is unsuccessful and the participant fails or refuses to demonstrate good cause, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

- (a) Work registrant has failed to comply with:
  1. Work registration requirements as established in Section 2 of this administrative regulation; or
  2. E&T requirements as established in Section 3 of this administrative regulation; or
  - (b) Household member has, as described in Section 9 of this administrative regulation, voluntarily:
    1. Quit a job; or
    2. Reduced his work effort.
- (2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:
  - (a) Illness of the individual;
  - (b) Illness of another household member requiring the presence of the individual;
  - (c) A household emergency;
  - (d) Unavailability of transportation; and
  - (e) Lack of adequate care for a child of age six (6) to twelve (12) for whom the individual is responsible.
- (3) Good cause for leaving employment shall be granted if:
  - (a) A circumstance specified in subsection (2) of this section exists;

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(b) The employment became unsuitable, in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance specified in 7 C.F.R. 273.7(i)(3) exists.

Section 7. Disqualification. (1) A mandatory participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration or E&T program requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort, as established in Section 8 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b) 1. Serves the disqualification period specified in subsection (2) of this section; and

2. Complies with the requirements of:

a. Work registration; or

b. The Employment and Training Program.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period specified in subsection (2) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size if determining the SNAP allotment.

Section 8. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily and without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces his work effort to less than thirty (30) hours per week, and after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) A disqualification period established in Section 7 of this administrative regulation shall be imposed.

Section 9. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 7(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end and the individual shall be eligible to apply to participate in SNAP.

Section 10. Hearing Process. If aggrieved by an action that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 11. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 12. Incorporation by Reference. (1) The following

material is incorporated by reference:

(a) "FSET-102, Conciliation Contact and Request for Information", 9/14[~~edition 3/13~~];

(b) "FSET-108, Job Search Contact Report", 9/14[~~edition 3/13~~]; and

(c) "FSET-145, Employment and Training Program Activity Report", 9/14[~~edition 3/13~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes technical eligibility requirements used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards of technical eligibility for the SNAP Employment and Training Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of the SNAP Employment and Training Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the technical eligibility requirements for the SNAP Employment and Training Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will revise material incorporated by reference (i.e., FSET-102, Conciliation Contact and Request for Information; FSET-108, Job Search Contact Report; and, FSET-145, Employment and Training Program Activity Report) to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative

regulation: The amendment to this administrative regulation is necessary to ensure the nondiscrimination statement included on incorporated material conforms to federal requirements. FNS revised the nondiscrimination statement in 2013. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. Approximately 825,684 individuals in 398,545 households participated in SNAP in Kentucky during February 2014. At this time, no individuals are participating in the E&T. In March 2014, over 47,000 SNAP applications were received.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no continuing cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP E&T receives an annual grant from the Food and Nutrition Service to cover 100 percent of operational costs. Transportation expenses are funded at a fifty (50) percent state and fifty (50) percent federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied since application of policy is applied in a like manner for all individuals statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

2. State compliance standards. KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 C.F.R. 272.1, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

STATUTORY AUTHORITY: KRS 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.18

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of

federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.18 requires the agency administering SNAP to develop a process to establish and collect claims. This administrative regulation establishes the criteria for recipient claims, collections provisions, and additional provisions used by the cabinet in the administration of SNAP.

Section 1. Responsibility for a Claim. The following individuals shall be responsible for paying a recipient claim as defined in 921 KAR 3:010:

(1) An individual who was an adult member of the household during the time period when the overissuance or trafficking occurred;

(2) A sponsor of an alien household member if the sponsor is at fault; or

(3) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overissuance or trafficking.

Section 2. Claim Category. (1) As specified in 921 KAR 3:010, a recipient claim shall be classified as an:

(a) Inadvertent household error (IHE);

(b) Agency error (AE); or

(c) Intentional program violation (IPV).

(2) Until fraud is substantiated, an IPV claim shall be established as an IHE with a Suspected Intentional Program Violation (SIPV), indicator.

Section 3. Acting on a Change. (1) A claim shall be established if a household:

(a) Fails to report a change in circumstance in accordance with the timeframes specified in 921 KAR 3:035; or

(b) Reports a change within the required timeframe, but the cabinet fails to act on the change within ten (10) days of the date the change is reported.

(2) The first month of overissuance, as defined in 921 KAR 3:010, shall:

(a) Be the first month that the change would have been effective had it been timely:

1. Reported by the household; or

2. Acted upon by the cabinet; and

(b) Not exceed two (2) months from the month the change in circumstance occurred.

Section 4. Calculating the Amount of a Recipient Claim. (1) In accordance with 7 C.F.R. 273.18(c), unless a claim is related to trafficking, the cabinet shall:

(a) Calculate:

1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overissuance, unless an IHE has an SIPV indicator; and

2. An IPV claim or an IHE claim with a SIPV indicator back to the month the fraudulent act first occurred, but not more than six (6) years prior to when the cabinet became aware of the overissuance;

(b) Determine the correct amount of SNAP benefits for each month that a household received an overissuance;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, as specified in Section 3 of this administrative regulation, if:

1. The claim is classified as an IPV or IHE; and

2. The IHE or IPV is the basis for the recipient claim;

(d) Subtract the correct amount of SNAP benefits from the benefits actually received and the difference shall be the amount of the overissuance; and

(e) Deduct any SNAP benefits that are designated to be expunged from a household's EBT account from the amount of overissuance:

1. When the recipient claim is initially calculated; and

2. At each subsequent expungement until the balance of the

claim is paid in full.

(2) If a claim is related to trafficking, the cabinet shall calculate the value of the trafficked SNAP benefits as determined by:

(a) An individual's admission;

(b) Adjudication; or

(c) The documentation that forms the basis for the trafficking determination.

(3) The amount of a claim may differ from a calculation obtained through the methods outlined in subsections (1) and (2) of this section if a different amount is ordered by:

(a) An administrative hearing officer or agency head in accordance with: 921 KAR 3:060 or 921 KAR 3:070; or

(b) A court.

(4) In accordance with 7 C.F.R. 273.18(e)(2), the cabinet shall not establish a recipient claim if the claim referral is \$125 or less, unless the:

(a) Household is currently participating in SNAP; or

(b) Recipient claim was established or discovered through a quality control review.

Section 5. KCD-1. (1) A KCD-1, General Claims Notice shall serve many purposes in the administration of claims collections, including the use as:

(a) An appointment notice;

(b) A demand letter;

(c) Notification of benefit reduction;

(d) A past due notice;

(e) A repayment agreement;

(f) A claim adjustment notice;

(g) A claim termination notice;

(h) A payment receipt;

(i) Notice of a suspended claim;

(j) Notice of a claim being paid in full; or

(k) Notification that a delinquent claim shall be sent to the U.S. Department of Treasury for collection.

(2) The language on the KCD-1 shall differ according to the purpose of the notice as described in subsection (1) of this section.

Section 6. Notification of a Claim. (1) A household with a suspected claim shall be mailed a KCD-1 notifying the household of an appointment to:

(a) Discuss the potential claim;

(b) Determine the classification of the claim, as specified in Section 2 of this administrative regulation; and

(c) Offer the recipient an opportunity to waive the administrative disqualification hearing if the claim is suspected to be an IPV.

(2) If a household requests to reschedule the appointment within ten (10) days of the date of the notice, the appointment shall be rescheduled.

(3) The cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet if the household:

(a) Fails to attend the appointment to discuss the potential claim; and

(b) Does not contact the cabinet to reschedule the appointment.

(4) When the cabinet determines the amount of a recipient claim, in accordance with Section 4 of this administrative regulation, collection shall be initiated and a KCD-1 shall be mailed to notify the household of the claim:

(a) Amount;

(b) Time period;

(c) Reason; and

(d) Category, as specified in Section 2 of this administrative regulation.

(5) The household shall return the KCD-1 within ten (10) days of receipt if the household chooses to:

(a) Initiate a repayment agreement; or

(b) Request a hearing on the claim.

Section 7. Collection Methods. (1) Benefit reduction.

(a) A household that is participating in SNAP shall have

payments on the claim made by reducing its monthly SNAP benefits through benefit reduction by the following amount:

1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly benefits or entitlement, unless the household agrees to a higher amount; or

2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly benefits, unless the household agrees to a higher amount.

(b) The cabinet shall not use additional collection methods against individuals in a household that is already having its benefits reduced unless the:

1. Additional payment is voluntary; or

2. Source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.

(2) A household may pay its claim using SNAP benefits from its EBT account if the household gives the cabinet permission:

(a) By completing and returning a KCD-1 or other written statement requesting this option; or

(b) Through an oral request for a one (1) time reduction and the cabinet provides the household with a receipt for the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged SNAP EBT benefits, the claim balance shall be reduced by an amount equal to the expunged benefits.

(4) During the claim establishment and collection process, the cabinet shall:

(a) Deduct the amount of an outstanding recipient claim from SNAP benefits that may be owed to a household; and

(b) Send the household a KCD-1 as notification of the adjustment.

(5) A lump sum payment on a recipient claim:

(a) Shall be accepted by the cabinet; and

(b) May be a full or partial payment.

(6) If a household is not participating in SNAP, the cabinet shall:

(a) Negotiate a repayment agreement, either orally or in writing, which includes a repayment schedule; and

(b) Employ additional collection methods if the claim becomes delinquent through the household's failure to submit a payment in accordance with the negotiated repayment agreement.

(7) In accordance with 7 C.F.R. 273.18(g), the cabinet may employ other collection methods to collect a recipient claim, such as:

(a) Referral to a public or private sector collection agency;

(b) Lottery offsets;

(c) Wage garnishment;

(d) The intercept of unemployment compensation benefits;

(e) State income tax refund intercept; or

(f) The intercept of any eligible federal payment owed the debtor through the Treasury Offset Program (TOP).

(8) The cabinet shall:

(a) Refer a recipient claim that is delinquent for 180 or more days to TOP, unless the debtor is a member of a participating household that is undergoing benefit reduction to collect a recipient claim; and

(b) Remove a recipient claim from TOP if the:

1. FNS or U.S. Department of the Treasury instructs the cabinet to withdraw a recipient claim;

2. Cabinet discovers that the debtor:

a. Is a member of a SNAP household undergoing benefit reduction; or

b. Has made an arrangement to resume payments; or

3. Claim:

a. Has been paid off;

b. Was disposed of through a hearing, termination, or compromise; or

c. Was referred to TOP in error.

Section 8. Delinquent Recipient Claims. (1) In accordance with 7 C.F.R. 273.18(e)(5), a recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim shall be the due date on the:

(a) Initial written notification if the claim meets the criteria of subsection (1)(a) of this section; or

(b) Missed installment payment if the claim meets the criteria of subsection (1)(b) of this section.

(3) Pursuant to 7 C.F.R. 273.18(e)(5)(ii), the claim shall remain delinquent until:

(a) Payment is received in full;

(b) Benefit reduction, as described in Section 7 of this administrative regulation, is implemented; or

(c) A satisfactory payment agreement is negotiated for a claim meeting the criteria of subsection (1)(a) of this section.

(4) A claim shall not be considered delinquent if:

(a) Another claim for the same household is currently being paid either through an installment agreement or benefit reduction; and

(b) The cabinet expects to begin collection on the claim once the prior claim is settled.

(5) If the cabinet is unable to determine delinquency status because claim collection is coordinated through the court system, a claim shall not be subject to the requirements for delinquent debts.

(6) A claim awaiting a fair hearing decision shall not be considered delinquent.

(7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:

(a) Renotify the household of the claim; and

(b) Base delinquency on the due date of the subsequent notice.

(8) If a hearing official determines that a claim does not exist, the cabinet shall:

(a) Dispose of the recipient claim in accordance with Section 9(2) of this administrative regulation; and

(b) Send a KCD-1 to notify the household of the terminated claim.

#### Section 9. Compromising, Terminating, and Writing-off Claims.

(1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, the cabinet may compromise a claim or a portion of a claim if:

(a) A request for compromise is received from the household; and

(b) In accordance with 7 C.F.R. 273.18(e)(7), the cabinet can make a reasonable determination that the household will be unable to pay off the claim within three (3) years.

(2) In accordance with 7 C.F.R. 273.18(e)(8), a claim shall be terminated and written off if:

(a) The claim:

1. Is invalid, unless it is appropriate to pursue the overissuance as a different type of claim;

2. Balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars; or

3. Has been delinquent for at least three (3) years and, in accordance with 7 C.F.R. 273.18(n), cannot be pursued through TOP;

(b) All adult household members, as specified in Section 1(1) of this administrative regulation, die; or

(c) The cabinet is unable to locate the household.

Section 10. Restoration of Benefits. (1) Benefits shall be restored to a household if the household has lost benefits:

(a) Due to an administrative error; or

(b) By an administrative disqualification for an IPV that is subsequently reversed.

(2) Benefits shall be restored for a period of not more than twelve (12) months from the date:

(a) The agency receives a request for restoration; or

(b) A final order is implemented, if no request for restoration is received.

(3) Benefits to be restored shall be calculated by determining the difference between what the household was entitled to receive and what the household actually received.

(4) Benefits to be restored shall be used to offset any unpaid or suspended claim that the household has.

Section 11. Disclosure of Information. The disclosure or use of information regarding SNAP participants shall be restricted to an individual who meets the criteria specified in 7 C.F.R. 272.1(c).

Section 12. Retention of Records. (1) In accordance with 7 C.F.R. 272.1(f), the cabinet shall retain program records:

(a) In an orderly fashion, for audit and review purposes; and

(b) Except for records specified in subsection (2) of this section, for a period of three (3) years from the:

1. Month of origin of each record; or

2. Date of fiscal or administrative closure for fiscal records and accountable documents, such as claims.

(2) The cabinet shall retain records on IPV disqualifications and work violations indefinitely.

Section 13. Civil Rights Compliance. In accordance with 7 C.F.R. 272.6, the cabinet shall not discriminate in any aspect of program administration on the basis of age, race, color, sex, disability, religion, political beliefs, or national origin.

Section 14. Incorporation by Reference. (1) "KCD-1, General Claims Notice", 9/14[~~edition 3/43~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573, tricia.orme@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform

standards for establishing and collecting SNAP claims.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing claims criteria for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, collections, and additional administrative provisions used by the cabinet in the administration of SNAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will revise material incorporated by reference, form KCD-1, General Claims Notice, to comply with federal regulations by updating the nondiscrimination statement as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. Other technical corrections were made in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the nondiscrimination statement included on incorporated material conforms to federal requirements. FNS revised the nondiscrimination statement in 2013. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. Approximately 825,684 individuals in 398,545 households participated in SNAP in Kentucky during February 2014. In March 2014, there were over 47,000 SNAP applicants. In December 2013, there were 19,479 active SNAP claims comprised of 3,208 Intentional Program Violations, 11,248 Inadvertent Household Errors, and 5,023 Agency Error claims.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no continuing cost to implement.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 272.1, 271.4, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

2. State compliance standards. KRS 194A.010, KRS 194A.050

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010, KRS 194A.050, 7 C.F.R. 272.1, 271.4, 272.5, 272.6, 273.16, 273.17, 273.18, 26 C.F.R. 301.6402-6

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation will not require any additional cost in the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation will not require any additional costs in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amendment)

#### 921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for such violations. KRS Chapter 13B establishes the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

(a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and

(b) Include:

1. The issuance of a recommended order;
2. Procedures for written exceptions; and
3. The issuance of a final order.

(2) The cabinet shall retain:

- (a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and
- (b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

(a) Initiate an administrative disqualification hearing; or

(b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80, Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

(a) Cabinet's suspicion that an IPV has been committed;

(b) Amount and period of the overpayment for the suspected IPV; and

(c) Household's right to an administrative disqualification hearing.

(2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A, Voluntary Waiver of SNAP

Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.

(3) If the household does not return the FS-80 Supplement A, the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3).

(4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:

- (a) By certified mail;
- (b) To the addressee only; and
- (c) With a return receipt requested.

(5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).

(6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.

(7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

- (a) Conduct an administrative disqualification hearing; and
- (b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 17[46].

(2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:

- (a) One (1) time; and
- (b) For no more than thirty (30) days.

(3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household representative does not appear for the administrative disqualification hearing, the hearing officer shall review the case file to determine if the hearing shall:

- (a) Proceed without household representation, because the return receipt from the hearing notice verified the notice was received by the individual; or
- (b) Not be conducted, because the hearing notice or return receipt is annotated as unclaimed or undeliverable.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall conduct a new hearing if the:

- (a) Household was not represented at the hearing;
- (b) Individual was determined to have committed an IPV; and
- (c) Hearing officer later determines the household had good cause, in accordance with 921 KAR 3:070, Section 8(2), for not appearing.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

- (a) IPV being substantiated by the final order or a court of appropriate jurisdiction;
- (b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A; or
- (c) Individual completing, signing, and returning the form FS-111, Deferred Adjudication Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

- (a) Reinstate the individual, if eligible; and
- (b) In accordance with 7 C.F.R. 273.17, restore benefits:
  - 1. That were lost as a result of the disqualification; and
  - 2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111, Deferred Adjudication Disqualification

Consent Agreement, in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing a FS-111 of the:

- (a) Consequences of consenting to disqualification;
- (b) Disqualification; and
- (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

- (a) Committed an IPV, as determined by:
  - 1. An administrative disqualification hearing; or
  - 2. A court; or
- (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

(1) Further administrative appeal procedures shall not exist after an:

- (a) Administrative disqualification hearing determines that an IPV was committed; or
- (b) Individual waives the right to an administrative disqualification hearing;

(2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FS-80, Notice of SNAP Suspected Intentional Program Violation", 9/14~~[edition 3/43]~~;
- (b) "FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing", 9/14~~[edition 3/43]~~; and
- (c) "FS-111, Deferred Adjudication Disqualification Consent Agreement", 9/14~~[edition 3/43]~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TERESA C. JAMES, LCSW, Commissioner

AUDREY TAYSE HAYNES, Secretary

APPROVED BY AGENCY: May 7, 2014

FILED WITH LRC: May 8, 2014 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 23, 2014, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2014, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative



regulation. You may submit written comments regarding this proposed administrative regulation until June 30, 2014. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone: 502-564-7905, Fax: 502-564-7573, email tricia.orme@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Elizabeth Caywood

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) in the Supplemental Nutrition Assistance Program (SNAP) has occurred and the penalties that apply for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for identifying and responding to IPV's within SNAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing cabinet procedures concerning an IPV in SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing IPV procedures for SNAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to the administrative regulation will revise material incorporated by reference, forms FS-80, Notice of SNAP Suspected Intentional Program Violation; FS-80, Supplement A, Voluntary Waiver of SNAP Administrative Disqualification Hearing; and FS-111, Deferred Adjudication Disqualification Consent Agreement, by updating the nondiscrimination statement, as required by the U.S. Department of Agriculture, Food and Nutrition Service (FNS), Office of Civil Rights. The amendment also makes technical corrections in accordance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the nondiscrimination statement included on incorporated material conforms to federal requirements. FNS revised the nondiscrimination statement in 2013. If the incorporated material does not conform, the state risks corrective action up to and including federal penalties and sanctions.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its congruency with federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by assuring compliance with federal requirements and affording public assistance recipients with adequate notice of their rights regarding nondiscrimination.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP recipients and potential applicants are affected by this administrative regulation. Approximately 825,684 individuals in 398,545 households participated in SNAP in Kentucky during February 2014. In March 2014, there were over 47,000 SNAP applicants. In December 2013, there were 19,479 active SNAP claims comprised of 3,208 Intentional Program Violations, 11,248 Inadvertent Household Errors, and 5,023 Agency Error claims.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will not require any additional actions on the part of SNAP applicants or recipients.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not impose a new cost or burden to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, regulated entities will have their rights to nondiscrimination and methods to report suspected discrimination clearly outlined, in accordance with federal requirements, within this administrative regulation's incorporated material.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The amendment to this administrative regulation is technical and conforming in nature and has no initial cost to implement.

(b) On a continuing basis: The amendment to this administrative regulation is technical and conforming in nature and has no continuing cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100 percent federally funded. Administrative functions are funded at a fifty (50) percent state and fifty (50) percent federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.15, 273.16, 273.17, 7 U.S.C. 2015

2. State compliance standards. KRS Chapter 13B, KRS 194A.010(2), KRS 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.15, 273.16, 273.17, 7 U.S.C. 2015

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of a stricter standard, or additional or different responsibilities or requirements, is not applicable.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13B, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.15, 273.16, 273.17, 7 U.S.C. 2015

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue and will not generate any revenue for the state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue and will not generate any revenue for the state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(Repealer)

704 KAR 3:346. Repeal of 704 KAR 3:345.

RELATES TO: KRS 156.557

STATUTORY AUTHORITY: KRS 156.070, 156.557(5)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(5)(c) requires the Kentucky Board of Education to develop written guidelines for local school districts to follow in implementing a statewide system of evaluation for certified personnel. If 704 KAR 3:345, Evaluation Guidelines, remained in place, it would contradict the new guidelines for the Professional Growth and Effectiveness System required by KRS 156.557(5)(c). This administrative regulation repeals 704 KAR 3:345, Evaluation Guidelines, because new guidelines have been established for the Professional Growth and Effectiveness System in a new regulation.

Section 1. 704 KAR 3:345, Evaluation guidelines, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

TERRY HOLLIDAY, Ph.D., Commissioner of Education  
ROGER MARCUM, Chairperson

APPROVED BY AGENCY: April 17, 2014

FILED WITH LRC: April 18, 2014 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on June 23, 2014, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: Repeals administrative regulation 704 KAR 3:345, which provided for evaluation guidelines for certified employees. Upon the adoption of the new Professional Growth and Effectiveness System regulation, 704 KAR 3:370, the provisions of 704 KAR 3:345 will no longer be applicable.

(b) The necessity of this administrative regulation: This regulation will repeal the current guidelines for certified employees which are being replaced by 704 KAR 3:370.

(c) How this administrative regulation conforms to the content of the authorizing statute: The regulation conforms to the authority given to the Kentucky Board of Education in KRS 156.070 and

KRS 156.557 to promulgate regulations affecting the operation of the common schools and the evaluation of certified employees in the schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation would, consistent with KRS 156.557, repeal 704 KAR 3:345.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statute: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this repeal are local school districts that evaluate certified employees pursuant to 704 KAR 3:345.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will no longer have the option to evaluate certified employees pursuant to 704 KAR 3:345. Districts will, instead, evaluate certified employees pursuant to the new Professional Growth and Effectiveness System regulation, 704 KAR 3:370.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with the repeal of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Districts will evaluate certified employees pursuant to the new Professional Growth and Effectiveness System regulation, 704 KAR 3:370, and implementation guidance promulgated by the Kentucky Department of Education.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts. N/A

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will repeal the administrative regulation 704 KAR 3:345, which provided for evaluation guidelines for certified employees. Upon the adoption of the new Professional Growth and Effectiveness System regulation, 704 KAR 3:370, the provisions of 704 KAR 3:345 will no longer be applicable.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 156.070 and KRS 156.557.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? There will be no cost associated with the repeal.

(d) How much will it cost to administer this program for subsequent years? There will be no cost associated with the repeal.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Repealer)**

**803 KAR 2:551. Repeal of 803 KAR 2:550.**

RELATES TO: KRS 338.015

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation repeals 803 KAR 2:550. Subpart DD of 29 C.F.R. 1926 was deleted; therefore, the provisions in 803 KAR 2:550 are obsolete.

Section 1. 803 KAR 2:550, Cranes and derricks used in demolition and underground construction, is hereby repealed.

LARRY L. ROBERTS, Chairman

APPROVED BY AGENCY: May 13, 2014

FILED WITH LRC: May 14, 2014 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 25, 2014 at 10:30 a.m. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3504, fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristi Redmon

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation acts specifically to repeal 803 KAR 2:550 related to the use of cranes and derricks during demolition and underground construction as found in Subpart DD of 29 Code of Federal Regulations 1926. The requirements of Subpart DD were deleted and moved to existing standards in 1926, eliminating the need for Subpart DD. The Kentucky OSH Standards Board voted on May 6, 2014 to repeal the regulation; therefore, 803 KAR 2:550 must be repealed.

(b) The necessity of this administrative regulation: The legislation related to 803 KAR 2:550 no longer exists which requires the repeal of the KAR.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. This repeals unnecessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote worker health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is not an amendment, but a repeal of an existing regulation.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: NA

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This is not an amendment. The existing requirements in 803 KAR 2:550 were already moved into another KAR in 2013; therefore, no new compliance requirements will result from the repeal of this KAR.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs because there are no additional compliance duties based on the repeal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no compliance requirements associated with the repeal of the KAR.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no cost related to the repeal.

(b) On a continuing basis: There will be no costs on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding related to the repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The removal of Subpart DD did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board voted to repeal 803 KAR 2:550 on May 06, 2014.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. The removal of Subpart DD did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky Occupational Safety and Health Standards Board adopted this amendment on May 06, 2014.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The repeal of the regulation does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The repeal of the regulation does not impose stricter requirements than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This repeal of 803 KAR 2:550 will affect any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No costs are associated with the repeal of this regulation.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with the repeal of the regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative

regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: No costs are associated with the repeal of the regulation.

#### PUBLIC PROTECTION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

##### 804 KAR 11:040. Growlers.

RELATES TO: KRS 241.060

STATUTORY AUTHORITY: KRS 241.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages. This administrative regulation allows a licensee that holds a retail malt beverage license to sell growlers.

Section 1. "Growler" means a refillable, resealable vessel no larger than two (2) liters with a flip-top or screw-on lid into which a malt beverage is prefilled, filled, or refilled for off-premises consumption. "Growler" shall not mean a vessel of similar size or capacity that is primarily used for the storage of other non-alcoholic liquids.

Section 2. The holder of a license permitting malt beverage package sales for off-premise consumption shall be permitted to sell filled growlers at retail for off-premise consumption if:

(1) The growler is cleaned and sanitized by the licensee or its employee prior to being filled as prescribed in Section 3 of this administrative regulation;

(2) The growler is filled and securely resealed by the licensee or an employee at least twenty (20) years old before being removed from the premise;

(3) The growler has a label affixed to it, legibly stating:

(a) The brand name of the product;

(b) The name and address of the brewer or bottler;

(c) The class of product (beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);

(d) The name and address of the licensee that filled or refilled the growler;

(e) The following statement, "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."; and

(f) The alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. 16.20 through 16.22.

Section 3. Cleaning, Sanitizing, Filling, and Sealing. (1) Filling and refilling growlers shall only occur at the request of a customer.

(2) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the licensee or its employee by:

(a) Manual washing in a three compartment sink;

1. Prior to starting, clean sinks and work area to remove any chemicals, oils, or grease from other cleaning activities;

2. Empty residual liquid from the growler to drain, but not into the cleaning water;

3. Clean the growler and cap using detergent and water exceeding 110 degrees Fahrenheit, or the temperature specified on the detergent manufacturer's label instruction. Detergent shall not be fat- or oil-based;

4. Remove any residues on the interior and exterior of the growler and cap;

5. Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot or from the tub as long as the water for rinsing shall not be stagnant, but shall be continually refreshed;

6. Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of the chemical; and

7. A test kit or other device that accurately measures the

concentration of MG/L of chemical sanitizing solutions shall be provided and be readily accessible for use; or

(b) Mechanical washing and sanitizing machine.

1. Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;

2. Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;

3. Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and

4. The machine shall be regularly serviced based upon the manufacturer's or installer's guidelines.

(3) Except as provided in subsection (2) of this section, a growler may be filled or refilled without cleaning and sanitizing the growler by:

(a) Filling or refilling a growler with a tube as referenced in subsection (4) of this section;

1. Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;

2. A container of liquid food grade sanitizer shall be maintained for no more than ten (10) malt beverage taps that will be used for filling and refilling growlers;

3. Each container shall contain no less than five (5) tubes that will be used only for filling and refilling growlers;

4. The growler is inspected visually for contamination;

5. The growler is filled or refilled with a tube as prescribed in subsection (5) of this section; and

6. A different tube from the container shall be used for each fill or refill of a growler; or

(b) Filling a growler with a contamination-free process. The growler is:

1. Inspected visually for contamination; and

2. Compliant with the FDA Food Code.

(4) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage faucet and extends to the bottom of the growler or with a commercial filling machine.

(5) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.

FREDERICK A. HIGDON, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: May 14, 2014

FILED WITH LRC: May 15, 2014 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2014 at 9 a.m., EDT, at the Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this Department in writing by June 16, 2014, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Trey Hieneman, Special Assistant, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trey Hieneman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates guidelines for retail licensees to sell growlers.

(b) The necessity of this administrative regulation: KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages. This regulation is necessary to regulate the sale of growlers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute. KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all licensees who sell malt beverages by the package for off premise consumption that elect to sell growlers.

(4) Provide an analysis of how entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(a) List the actions that each of the regulated entities in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this administrative regulation if the licensee does not sell growlers. If the licensees sell growlers, they will be required to label and sanitize all growlers that they sell.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The aforementioned licensees will be permitted to sell growlers at retail for off premise consumption, if they meet the criteria of this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No extra costs are anticipated to implement this administrative regulation amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funding is used for the implementation and enforcement of the administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase in fees or funding necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. There are no costs associated with administering this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What unit, part, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation. The Kentucky Department of Alcoholic Beverage Control is the only government entity affected by this amendment.

2. Identify each state or federal statute or federal regulation that authorizes the action taken by the administrative regulation. KRS 241.060 authorizes the Alcoholic Beverage Control Board to regulate the sale of alcoholic beverages.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts). This amendment will have no affect on expenditures or revenue of any level of government.

(a) How much revenue will this administrative regulation general for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by this administrative regulation.

(c) How much will it cost to administer this program for the first year? The cost to administer this amendment should be minimal, if any.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this amendment should be minimal, if any.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Additional costs to administer these regulatory changes at the local government level for this year or subsequent years should be minimal or none.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of May 13, 2014

**Call to Order and Roll Call**

The May 2014 meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 13, 2014, at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Ernie Harris, Co-chair, called the meeting to order, the roll call was taken. The minutes of the April 2014 meeting were approved.

**Present were:**

**Members:** Senators Perry Clark, Robert Damron, Alice Forgy Kerr, Sara Beth Gregory; and Representatives Johnny Bell, Robert Damron, and Tommy Turner.

**LRC Staff:** Donna Little, Emily Caudill, Sarah Amburgey, Carrie Klaber, Emily Harkenrider, Karen Howard, and Betsy Cupp.

**Guests:** Beau Barnes, Kentucky Teachers' Retirement System; Robert Brown, Darren Sammons, Department for Local Government; Lavonne Bowling, Kenneth Hill, Steve VanZant; Board of Auctioneers; David Beyer, Board of Dentistry; Sonja Minch, Francis Simpson, Board of Barbering; Karen Waldrop, David Wicker, Department of Fish and Wildlife Resources; Morgain Sprague, Kentucky State Police; Amy Barker, Department of Corrections; Ann D'Angelo, Michael Hill, Jamie Fiedke, Transportation Cabinet; Fred Huggins, Eddie Jacobs, Occupational Safety and Health Review Commission; Trey Hieneman, Department for Alcoholic Beverage Control; Mary Begley, Ijeoma Eneje, Kara Fresh, Beth Jordan, Natalie Kelly, Lawrence Kissner, Stuart Owen, Vestena Robbins, Cabinet for Health and Family Services; Peter Goodman, Randall Payne, R. Bruce Scott, Department for Environmental Protection; Nancy Galvagni, Sarah Nicholson, Kentucky Hospital Association; Darlene Eakin, Kentucky Optometric Association; Kathy Wheeler, Kentucky Coalition of Nurse Practitioners/Nurse Midwives; Doug Doerrfeld, Suzanne Tallichet, Ted Withrow; Kentuckians for the Commonwealth.

**The Administrative Regulation Review Subcommittee met on Tuesday, May 13, 2014, and submits this report:**

**The Subcommittee determined that the following administrative regulation did not comply with statutory requirements and was deficient:**

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services**

907 KAR 1:604 & E. Recipient cost-sharing. Lawrence Kissner, commissioner, and Stuart Owen, regulation coordinator, represented the department. Nancy Galvagni, senior vice president, and Sarah Nicholson, vice president, represented the Kentucky Hospital Association and appeared in opposition to this administrative regulation.

Ms. Galvagni stated that the Kentucky Hospital Association was opposed to this administrative regulation because of provisions for an eight (8) dollar copay for nonemergency use of an emergency room. The copay itself was not the issue. The cabinet had federal approval regarding the state plan to determine what constituted nonemergency use of an emergency room; however, two managed care organizations (MCOs) were using different standards to determine nonemergency use. Coventry and WellCare MCOs, in policies developed subsequent to contracts between the MCOs and the providing hospitals, established criteria that differed from that approved for Kentucky by the federal agency.

Ms. Galvagni stated that the appropriate party to determine if use of an emergency room was for nonemergency reasons would be hospital medical personnel, as established in the federal approval of the cabinet's determination criteria. The determination criteria established by Coventry and WellCare were not part of any negotiated policies with the providing hospitals. The hospitals had not agreed to and were opposed to these policies. Ms. Galvagni

requested that the eight (8) dollar copay requirements be removed from this administrative regulation until the related issues were resolved. If the cabinet declined to amend this administrative regulation to remove the copay, Ms. Galvagni requested that the Subcommittee find this administrative regulation deficient.

In response to a question by Senator Clark, Ms. Galvagni stated that the copay was being increased from six (6) to eight (8) dollars, which was a difference of two (2) dollars. The issue however was with the independent policies established by Coventry and WellCare MCOs.

In response to a question by Representative Damron, Ms. Galvagni stated that Kentucky had five (5) Medicaid MCOs. Three (3) of the five (5) seemed to be following federally approved guidelines regarding determination of nonemergency use of emergency rooms; however, Coventry and WellCare did not seem to be complying with those standards.

In response to a question by Co-Chair Harris, Mr. Kissner stated that the cabinet could not agree to remove the copay because of financial imbalances that would result.

In response to a question by Senator Kerr, Subcommittee staff stated that there were not any representatives of the MCOs present at the Subcommittee meeting.

In response to a question by Senator Clark, Mr. Kissner stated that the cabinet did not have authority regarding MCO compliance with contracts between the MCOs and the providing hospitals.

In response to questions by Co-Chair Bell, Mr. Kissner stated that the decision regarding if an emergency room visit is an actual emergency was made by a doctor based on national standards after the visit. MCOs made the decisions pursuant to contracts between the MCOs and the providing hospitals. Co-Chair Bell responded that a medical expert at the providing hospital, not someone in another state, should make the decision. He expressed concern that a hospital may not treat the patient effectively if the hospital was preoccupied with concerns regarding reimbursement. Additionally, the Subcommittee did not have access to the contracts in order to make an informed decision.

In response to a question by Senator Kerr, Mr. Owen stated that the cabinet was not disputing the federal authority to require the providing hospital to make a determination regarding if an emergency room visit was nonemergency, but that issue was not directly germane to the eight (8) dollar copay. Ms. Galvagni stated that the contracts between the MCOs and the providing hospitals did not include the policies used by Coventry and WellCare to determine nonemergency emergency room use. These policies were developed after the contracts were already in place. Senator Kerr stated that the MCOs should have representatives available to respond.

In response to questions by Representative Damron, Mr. Kissner stated that the Department of Insurance provided oversight and reviewed fiscal filings of these MCOs. The filings were conducted quarterly, and an audit was conducted each June. Both Coventry and WellCare have been losing money pertaining to these contracts; however, they remain hopeful and continue to honor the contracts that have been made.

In response to a question by Co-Chair Harris, Mr. Kissner stated that the cabinet declined to defer because the affiliated emergency administrative regulation would then expire before this ordinary administrative regulation could become effective.

Co-Chair Bell stated that, if this problem was not soon resolved, the General Assembly would consider legislation to establish the determination criteria statutorily.

A motion was made by Representative Turner and seconded by Senator Gregory to find 907 KAR 1:604 & E deficient due to lack of statutory authority. A roll call vote was conducted, and with six (6) votes to find this administrative regulation deficient, one (1) pass vote, and one (1) member absent, the motion was approved.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to add a statutory citation; (2) to amend Sections 1, 2, 3, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (3)



to amend Section 2 to: (a) establish the copayment amount for services at a federally qualified health center look-alike; and (b) specify that the full amount of the established copayment shall be deducted from the provider reimbursement. Without objection, and with agreement of the agency, the amendments were approved.

**Administrative Regulations Reviewed by the Subcommittee:**

**FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules**

102 KAR 1:270. Statement of member account. Beau Barnes, deputy executive secretary and general counsel, represented the system.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:320. Qualified domestic relations orders.

In response to a question by Co-Chair Harris, Mr. Barnes stated that the determination of the marital portion was a calculation used in situations of divorce. The calculation was an alternative and better way to calculate the marital portion.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**OFFICE OF THE GOVERNOR: Department for Local Government: County Budget**

109 KAR 15:020. County Budget Preparation and State Local Finance Officer Policy Manual. Robert Brown, state and local finance officer, and Darren Sammons, staff attorney, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**GENERAL GOVERNMENT CABINET: Board of Auctioneers: Board**

201 KAR 3:025. Reciprocity requirements. Kenneth Hill, executive director, and Steve Van Zant, attorney, represented the board.

201 KAR 3:090. Administrative fees for applications and services.

In response to a question by Co-Chair Harris, Mr. Van Zant stated that the filing fee was being increased to meet the board's budget needs because new requirements increased expenses while a twelve (12) percent reduction in the number of licensees and the elimination of the principal examination and its fee decreased income. The fee had not been increased since 2003.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add statutory citations; (2) to amend Section 1 to: (a) establish the \$125 examination fee for each new applicant with the board; and (b) delete the payment of an additional late fee after the six (6) month grace period; (3) to amend Section 4 to require a licensee to pay the renewal recovery fee of thirty (30) dollars to reactivate a license placed in escrow; and (4) to amend the

NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Dentistry: Board**

201 KAR 8:016. Registration of dental laboratories. David Beyer, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:532. Licensure of dentists.

A motion was made and seconded to approve the following amendments: to amend Section 16 to revise the renewal form incorporated by reference because the administrative regulation no longer requires the form to be notarized and include a photograph. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 8:562. Licensure of dental hygienists.

A motion was made and seconded to approve the following amendments: to amend Section 17 to revise the renewal form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**Board of Barbering: Board**

201 KAR 14:090. School curriculum. Sonja Minch, administrator, and Francis Simpson, chair, represented the board.

In response to questions by Co-Chair Harris, Ms. Minch stated that the one (1) hour per day lecture and demonstration requirement has been an on-going requirement; however, in the previous amendment to this administrative regulation, the requirement was inadvertently deleted. A total of 1,500 total hours was required for licensure.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:115. Examinations; school and board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to specify examination requirements; (2) to create a new Section 9 to incorporate by reference various application forms; and (3) to amend Sections 2, 3, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game**

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts. Karen Waldrop, wildlife division director, and David Wicker, general counsel, represented the department.

In response to a question by Senator Clark, Ms. Waldrop stated that provisions related to elk depredation were for homeowners who had experienced property damage due to elk.

In response to questions by Co-Chair Harris, Ms. Waldrop stated that elk were present in the sixteen (16) counties that constituted the Elk Restoration Zone, and elk had not strayed much from those counties. A hunter who found an elk outside of the Elk Restoration Zone may take the elk if the hunter has a deer permit. Initially, approximately 1,500 elk were brought into the Elk Restoration Zone, and today there were approximately 10,000 elk.

A motion was made and seconded to approve the following amendment: to amend Section 5 to clarify subsection (14). Without objection, and with agreement of the agency, the amendment was approved.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver Testing Branch: Breath Analysis Operators**

500 KAR 8:030. Administration of breath alcohol tests and chemical analysis tests. Morgain Sprague, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 3 for clarification. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Highways: Division of Professional Services: Professional Engineering and Related Services**

600 KAR 6:040. Prequalification of firms for engineering or engineering-related services. Ann D'Angelo, assistant general counsel; Michael Hill, professional services division director; and Jamie Fiepe, motor carrier advisory committee president, represented the department.

In response to questions by Co-Chair Harris, Mr. Hill stated that the authorizing statute required annual qualification submittal. This administrative regulation clarified that a letter shall suffice as the annual submittal in odd-numbered years if there were not significant changes, such as changes in qualified personnel.

**Department of Vehicle Regulation: Division of Motor Carriers: Motor Carriers**

601 KAR 1:230. Education and safety training for motor carrier operations.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to revise the application form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

**LABOR CABINET: Kentucky Occupational Safety and Health Review Commission: Commission**

803 KAR 50:010. Hearings; Procedure, Disposition. Fred Huggins, attorney, and Eddie Jacobs, executive director, represented the commission.

In response to questions by Senator Clark, Mr. Huggins stated that labor unions, in addition to corporations and partnerships, were required to be represented by an attorney. Kentucky Constitution Section 160 established that the Kentucky Supreme Court had the authority to establish rules of practice. The Kentucky Supreme Court, in its rules, established that a person may serve as his or her own counsel, but an artificial person, such as a corporation, etc. was required to retain a licensed attorney. Most businesses already had legal representation; however, there were businesses that were unable to retain counsel. Usually those businesses without legal counsel worked with the agency to settle issues before hiring an attorney would be necessary. When a labor union was involved, there was usually a third party intervener in matters of litigation.

In response to a question by Senator Gregory, Mr. Jacobs stated that a non-person entity that was unable to afford or for another reason retain a licensed attorney typically did not appear at hearings; therefore, the matter would result in default of the entity.

Representative Damron stated that the General Assembly had experienced similar problems pertaining to the autonomy of the Judicial Branch. For example, Frankfort's former Home Depot building had been obtained and remodeled without authority of the General Assembly and with independent, unaccounted for funds of the branch. The Judicial Branch lacked adequate auditing standards, and the State Auditor did not have constitutional authority to investigate the financial matters of the branch. The requirement to hire a licensed attorney seemed inappropriate.

In response to a question by Co-Chair Bell, Mr. Huggins stated that the language was added back into this administrative regulation after an ethics opinion. Case law focused exclusively on the idea that a nonattorney shall not practice law.

A motion was made and seconded to approve the following

amendments: (1) to amend the STATUTORY AUTHORITY paragraph to include additional relevant citations; (2) to amend Section 2 to delete requirements that repeated statutory provisions; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 9, 13, 26, 28, 29, 33, 45, and 51 to include cross-references and make other changes for clarity; and (4) to amend Sections 1, 3, 4, 6 through 11, 13 through 18, 20, 21, 22, 26 through 32, 35 through 37, 39, 40, 42, and 44 through 59 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine**

804 KAR 1:051. Repeal of 804 KAR 1:050. Trey Hieneman, legislative liaison, represented the department.

**Quotas**

804 KAR 9:050. Quota retail drink licenses.

In response to a question by Co-Chair Harris, Mr. Hieneman stated that this was not a new ratio and was intended to create parity with the administrative regulation governing quota licenses by the drink.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to clarify this administrative regulation's applicability to cities that have already been given quotas; (2) to amend Section 3 to establish the standard the board shall use to determine if a city shall receive an increased quota; (3) to add new Sections 5 and 6 to establish procedures for quota vacancies and reductions; (4) to add a new Section 7 to establish that if a dry county with a wet city becomes wet, the quota for the county shall supersede the city quota; and (5) to amend Sections 1, 2, and 3 to reorganize provisions and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Medicaid Services**

907 KAR 1:019 & E. Outpatient Pharmacy Program. Lawrence Kissner, commissioner, and Stuart Owen, regulation coordinator, represented the cabinet. Dr. Kathy Wheeler, Kentucky Coalition of Nurse Practitioners or Nurse Midwives, appeared in support of 907 KAR 1:082. Darlene Eakin, executive director, Kentucky Optometric Association, appeared in support of 907 KAR 1:631 and 1:632.

In response to a statement by Senator Gregory, Mr. Owen stated that all of these administrative regulations were not mandated by the Affordable Care Act, but all related to the expansion of Medicaid.

A motion was made by Senator Gregory and seconded by Representative Turner to find these administrative regulations deficient due to lack of statutory authority. A roll call vote was conducted, and, with four (4) votes to find these administrative regulations deficient, one (1) pass vote, two (2) votes against a finding of deficiency, and one (1) member absent, the motion failed. A majority vote of at least five (5) votes for a finding of deficiency is required for the motion to pass.

Representative Damron stated that he voted against finding these administrative regulations deficient because there were many good things in these administrative regulations, including provisions for substance abuse treatment and eye care.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 5, 7, 8, 9, 13, 14, 15, and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to delete from the list of drugs excluded from coverage a barbiturate or a benzodiazepine; and (3) to amend Section 17 and the forms incorporated by reference to update the forms required to request prior authorization for drugs. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:030 & E. Home health agency services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, 4, 5, 7, 8, 10, and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 3 to require coverage of: (a) a supply listed on the Home Health Schedule of Supplies if the supply is provided to a recipient pursuant to the recipient's plan of care; or (b) a listed supplemental nutritional product if a physician certifies the medical necessity of the supplemental nutritional product; and (3) to amend Section 11 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:038 & E. Hearing Program coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Sections 3 and 4 to delete provisions already established elsewhere in this administrative regulation or in 907 KAR 1:039. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:039 & E. Hearing Program reimbursement provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to delete provisions that duplicated provisions established in 907 KAR 1:038. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:044 & E. Coverage provisions and requirements regarding community mental health center services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "mental health associate"; (2) to amend Section 4 to delete medication assisted treatment for a substance use disorder from the list of rehabilitative mental health and substance use disorder services covered under this administrative regulation; (3) to amend Section 7 to change references from "practitioner" to "mental health associate working under supervision or a professional equivalent"; (4) to amend Section 13 to update the material incorporated by reference; (5) to amend Sections 2, 5, 7, and 9 through 14 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (6) to amend Section 9 to delete provisions that duplicated provisions established elsewhere in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:045 & E. Reimbursement provisions and requirements regarding community mental health center services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to delete medication assisted treatment for a substance use disorder and its per diem unit of service from the table establishing the payments based on units of service; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Sections 2 and 3 to delete provisions that duplicated provisions established elsewhere in the administrative regulation and in 907 KAR 1:044; and (4) to amend Section 3 to change a unit of service for therapeutic rehabilitation from one (1) hour to fifteen (15) minutes. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:054 & E. Coverage provisions and requirements regarding federally-qualified health center services, federally-qualified health center look-alike services, and primary care center services.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) insert definitions for "licensed assistant behavior analyst", "licensed behavior analyst",

"licensed professional art therapist", and "licensed professional art therapist associate"; and (b) delete the definitions of "club house model of psychosocial rehabilitation" and "fountain house"; (2) to amend Section 4 to: (a) delete requirements that the supervising professional also be the billing provider for the service; (b) update the list of providers authorized to provide given services; (c) delete authorization for medication assisted treatment for a substance use disorder; (d) clarify requirements for service planning and for therapeutic rehabilitation program services; (e) authorize group outpatient therapy for groups not to exceed twelve (12), rather than eight (8), individuals; and (f) authorize intensive outpatient program services with a recipient-to-staff ratio of ten (10) to one (1), rather than fifteen (15) to one; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to specify that this administrative regulation also applies to federally qualified health center look-alike services; (4) to amend Sections 1 through 4, 8, 11, 12, 15, and 16 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (5) to amend Section 8 to delete provisions that duplicated provisions established elsewhere in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:082 & E. Coverage provisions and requirements regarding rural health clinic services.

Dr. Wheeler stated that the Kentucky Coalition of Nurse Practitioners or Nurse Midwives supported this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) insert definitions for "licensed assistant behavior analyst", "licensed behavior analyst", "licensed professional art therapist", and "licensed professional art therapist associate"; and (b) delete the definitions of "club house model of psychosocial rehabilitation" and "fountain house"; (2) to amend Section 3 to: (a) delete requirements that the supervising professional also be the billing provider for the service; (b) update the list of providers authorized to provide given services; (c) delete authorization for medication assisted treatment for a substance use disorder; (d) clarify requirements for service planning and for therapeutic rehabilitation program services; (e) authorize group outpatient therapy for groups not to exceed twelve (12), rather than eight (8), individuals; and (f) authorize intensive outpatient program services with a recipient-to-staff ratio of ten (10) to one (1), rather than fifteen (15) to one; (3) to amend Sections 1 through 4, 8, 11, 14, and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Section 8 to delete provisions that duplicated provisions established elsewhere in the administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:631 & E. Vision Program reimbursement provisions and requirements.

Ms. Eakin stated that the Kentucky Optometric Association supported this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to define "CPT code" and "usual and customary charge"; (3) to amend Section 2 to delete provisions that are established in 907 KAR 1:632; (4) to amend Section 5 to change references from "twelve (12) consecutive month period" to "calendar year"; and (5) to amend Section 10 to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 1:632 & E. Vision Program coverage provisions and requirements.

Ms. Eakin stated that the Kentucky Optometric Association supported this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 4 and 11 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 2 to: (a) specify that a physician shall be an authorized

provider of vision services; and (b) delete provisions that are established in 907 KAR 1:631; (3) to amend Section 3 to specify that vision service coverage is limited to a service listed with a CPT code or an item with an HCPCS code on the fee schedule; (4) to amend Section 4 to specify that provisions regarding any limit on the number of eyeglasses covered shall be as established in 907 KAR 1:631; and (5) to amend Section 14 to update the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

#### **Payments and Services**

907 KAR 3:005 & E. Coverage of physicians' services.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 8 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to define "advanced practice registered nurse", "locum tenens APRN", and "locum tenens physician"; (3) to amend Section 3 to specify that direct physician contact is not required for a locum tenens APRN who provides direct APRN contact; and (4) to amend Section 6 to clarify prior authorization requirements. Without objection, and with agreement of the agency, the amendments were approved.

#### **Occupational, Physical, and Speech Therapy**

907 KAR 8:005 & E. Definitions for 907 KAR Chapter 8.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:010 & E. Independent occupational therapy service coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:015 & E. Independent occupation therapy service reimbursement provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to delete provisions that repeated 907 KAR 8:010. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:020 & E. Independent physical therapy service coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 7, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:025 & E. Physical therapy service reimbursement provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 1 to delete provisions that repeated 907 KAR 8:020. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:030 & E. Independent speech pathology service coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 5, 7, 8, and 10 to comply with the drafting and formatting requirements of

KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 8:035 & E. Speech language pathology service reimbursement provisions and requirements.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 2, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Hospital Service Coverage and Reimbursement**

907 KAR 10:014 & E. Outpatient hospital service coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add definitions for "certified alcohol and drug counselor", "licensed assistant behavior analyst", "licensed behavior analyst", "licensed professional art therapist", and "licensed professional art therapist associate"; and (b) revise the definitions of "licensed psychological associate" and "licensed psychological practitioner"; (2) to amend Section 5 to: (a) update the list of providers authorized to provide specific services; and (b) authorize intensive outpatient program services with a recipient-to-staff ratio of ten (10) to one (1), rather than fifteen (15) to one (1); (c) clarify the requirements for partial hospitalization; and (d) authorize group outpatient therapy for groups not to exceed twelve (12), rather than eight (8), individuals; (3) to amend Sections 1 through 8, 10, 11, and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (4) to amend Sections 2 and 5 to delete provisions established elsewhere in this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

#### **Private Duty Nursing**

907 KAR 13:005 & E. Definitions for 907 KAR Chapter 13.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 13:010 & E. Private duty nursing service coverage provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 3, 8, and 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to specify that the limit for private duty nursing services is based on a twelve (12) consecutive month period, rather than annually. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 13:015 & E. Private duty nursing service reimbursement provisions and requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 4 to clarify that this administrative regulation also established reimbursement provisions for private duty nursing supplies; (2) to amend Sections 2 and 5 to comply with the drafting requirements of KRS Chapter 13A; and (3) to create a new Section 6 to incorporate by reference the Private Duty Nursing Supplies Fee Schedule. Without objection, and with agreement of the agency, the amendments were approved.

#### **Behavioral Health**

907 KAR 15:005 & E. Definitions for 907 KAR Chapter 15.

A motion was made and seconded to approve the following amendments: to amend Section 1 to: (1) define "approved behavioral health services provider", "licensed assistant behavior analyst", "licensed behavior analyst", "licensed art therapist", and "licensed professional art therapist associate"; and (2) comply with

the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:010 & E. Coverage provisions and requirements regarding behavioral health services provided by independent providers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to: (a) update the list of providers authorized to provide given services; (b) delete medication assisted treatment for a substance use disorder from the list of covered services; (c) authorize group outpatient therapy for groups not to exceed twelve (12), rather than eight (8), individuals; (d) authorize intensive outpatient program services with a recipient-to-staff ratio of ten (10) to one (1), rather than fifteen (15) to one (1); and (e) establish requirements for billing providers; and (2) to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

907 KAR 15:015 & E. Reimbursement provisions and requirements for behavioral health services provided by independent providers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) update the list of providers authorized to be reimbursed for providing given services; and (b) specify that reimbursement for various services shall be as stated on the Non-Medicare Services Fee Schedule; and (2) create a new Section 6 to incorporate by reference the Non-Medicare Services Fee Schedule. Without objection, and with agreement of the agency, the amendments were approved.

**Department for Behavioral Health, Developmental and Intellectual Disabilities: Division for Behavioral Health: Mental Health**

908 KAR 2:240 & E. Kentucky Youth Peer Support Specialist. Mary Begley, commissioner; Ijeoma Eneje, regulation coordinator; Beth Jordan, branch manager; Vestena Robbins, policy advisor; Kara Fresh, program administrator; and Natalie Kelly, division director, represented the cabinet.

In response to a question by Representative Damron, Ms. Begley stated that provider groups were in support of these administrative regulations.

In response to a question by Senator Gregory, Ms. Begley stated that these administrative regulations, both of which were new administrative regulations, were the result of Medicaid expansion pursuant to the Affordable Care Act.

A motion was made by Senator Gregory and seconded by Representative Turner to find these administrative regulations deficient due to lack of statutory authority. A roll call vote was conducted, and, with four (4) votes to find these administrative regulations deficient, three (3) votes against a finding of deficiency, and one (1) member absent, the motion failed. A majority vote of at least five (5) votes for a finding of deficiency is required for the motion to pass.

Representative Damron stated that he voted against finding these administrative regulations deficient because they established standards for the Kentucky Youth Peer Support program. Without these administrative regulations, the program would be without protocol.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to: (a) insert a new list of professionals that can serve as a KYPSS supervisor; and (b) require a written record of supervision; (2) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to add statutory citations; (3) to amend Section 1 to add a definition for "child-serving agency"; (4) to amend Section 3 to establish standards for the department to approve the required training courses; (5) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to clarify various provisions; (6) to amend the training application to align the application with the requirements of this administrative regulation; and (7) to amend Sections 1, 3, 6, and 7 to comply with the drafting

and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

908 KAR 2:250 & E. Community support associate; eligibility criteria and training.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to: (a) insert a new list of professionals who may serve as a community support associate supervisor; and (b) require a written record of supervision; (2) to amend Section 1 to delete unnecessary definitions; and (3) to amend Sections 1 through 3 to clarify various provisions. Without objection, and with agreement of the agency, the amendments were approved.

**OTHER BUSINESS:**

**ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water**

401 KAR 10:031. Surface water standards. Peter Goodmann, executive director; Randall Payne, environmental scientist III; and Bruce Scott, commissioner, represented the division. Ted Withrow, Kentuckians for the Commonwealth, appeared in opposition to this administrative regulation.

In response to questions by Representative Turner, Mr. Scott stated that the division became aware of the December 27, 2013 letter from Virgil Lee Andrews, Jr., field office supervisor, U.S. Fish and Wildlife, to Annie Godfrey, chief, Water Quality Standards Section, U.S. Environmental Protection Agency (EPA), in February 2014. The letter addressed an issue of consultation between U.S. Fish and Wildlife and U.S. EPA. The issue concerned the selenium standard established in 401 KAR 10:031. The main concern by U.S. Fish and Wildlife was the division's lack of peer review regarding the studies used to support the selenium standard. The division was not a direct party to the letter. U.S. EPA had approved the standard and disagreed with concerns expressed by U.S. Fish and Wildlife. U.S. EPA was drafting a response letter to U.S. Fish and Wildlife and was working on a national fish-tissue based selenium standard, which would probably differ from Kentucky's standard because it would be a national standard. U.S. EPA approved the Kentucky standard after considering U.S. Fish and Wildlife's concerns regarding threatened and endangered species. There was also on-going litigation regarding U.S. EPA's approval of the standard and a second notice of intent to litigate on the same issue. The standard was comparable or more stringent than many other states, and the division believed it to be a protective standard. Analytical methods were the same from state to state because they were based on federally approved methods. The division considered U.S. EPA's approval to be a form of peer review, and the matter had been fully vetted at the federal level. The standard was determined based on science, not politics, and the division believed that more selenium impairments would be identified with this standard and method than the previous method. Numerous studies were listed from the past twenty (20) years to support that selenium was not a significant problem in Kentucky waterways.

Representative Turner thanked the agency for appearing and stated that the General Assembly had the authority to establish the standard through the legislative process and that he looked forward to more studies and information from the division regarding selenium.

Mr. Withrow stated that he was formerly employed by the Division of Water, and that this administrative regulation was insufficient to prevent selenium contamination. Outstanding State Resource Waters were rare, and there were only approximately 100 miles of waters in that classification. The public meetings conducted regarding this administrative regulation were really private meetings by invitation of the division. U.S. EPA was one (1) step in the process but did not constitute full peer review. The scientific studies used to support the standard were "cherry picked." Outfields were not previously monitored. The analytical method was difficult and expensive for the agency to sufficiently monitor, and because of the method's difficulty and expense

watchdog oversight would not be feasible. This administrative regulation was a gift to the coal industry.

Senator Kerr requested that Subcommittee members be provided with more information about the Subcommittee's duties, powers, and history, especially the reason for the creation of this Subcommittee. She stated that there was a pattern of a lack of respect toward the Subcommittee by those submitting testimony from the Executive Branch.

In response to questions by Senator Kerr, Subcommittee staff stated that some matters may be established or amended through legislation, but that the Subcommittee had limits based on case law, especially *LRC v. Brown* and *Patton v. Sherman*. Subcommittee staff stated that information would be personally provided to Senator Kerr about the Subcommittee's duties, powers, and history.

**The following administrative regulations were deferred to the June 10, 2014, meeting of the Subcommittee:**

**GENERAL GOVERNMENT CABINET: Board of Barbering: Board**

201 KAR 14:085. Sanitation requirements.

**Board of Nursing: Board**

201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs.

**Board of Physical Therapy: Board**

201 KAR 22:160. Telehealth and telephysical therapy.

**Board of Licensure for Professional Art Therapists: Board**

201 KAR 34:060. Qualifying experience under supervision.

**JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. Amy Barker, assistant general counsel, represented the department.

In response to questions by Co-Chair Bell, Ms. Barker stated that this administrative regulation provided for an extension of time to address an inmate grievance if necessary to adequately investigate. The term "contraband" was amended to create parity for the term across the program. The term "cross-gender search" was amended to insert a word that was inadvertently missing. The term "exigent circumstances" changed "facility" to "institution." A waiver was required of media in case of injury because it was impossible to 100 percent guarantee safety.

In response to a question by Co-Chair Harris, Ms. Barker stated that the intent of this administrative regulation was not to limit media access but to establish security measures pertaining to media situations. Ms. Barker agreed to defer consideration of this administrative regulation, as amended, to the June 10 Subcommittee meeting.

A motion was made and seconded to approve the following amendments: (1) to amend CPP 1.2, News Media, to: (a) establish the conditions under which an interview request may be denied; and (b) clarify identification requirements; (2) to amend CPP 9.8, Search Policy, to clarify definitions for contraband, cross-gender searches, and exigent circumstances; and (3) to amend Section 1 to change the edition dates for those revised policies. Without objection, and with agreement of the agency, the amendments were approved.

**TRANSPORTATION CABINET: Department of Highways: Division of Maintenance: Billboards**

603 KAR 10:001. Definitions.

603 KAR 10:010. Static advertising devices.

603 KAR 10:020. Electronic advertising devices.

603 KAR 10:030. Removal of vegetation related to advertising devices.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Hospital Service Coverage and Reimbursement**

907 KAR 10:825. Diagnosis-related group (DRG) inpatient hospital reimbursement.

**The Subcommittee adjourned at 3:10 p.m. until June 10, 2014 at 1 p.m.**

**OTHER COMMITTEE REPORTS**

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE





## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates

L - 2

The Locator Index lists all administrative regulations published in VOLUME 40 of the *Administrative Register of Kentucky* from July 2013 through June 2014. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 39 are those administrative regulations that were originally published in VOLUME 39 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the 2013 *Kentucky Administrative Regulations Service* was published.

### KRS Index

L - 16

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 40 of the *Administrative Register of Kentucky*.

### Technical Amendment Index

L - 31

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2013 *Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

### Subject Index

L - 32

The Subject Index is a general index of administrative regulations published in VOLUME 40 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	39 Ky.R. Page No.	Effective Date	Regulation Number	39 Ky.R. Page No.	Effective Date
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## VOLUME 39

The administrative regulations listed under VOLUME 39 are those administrative regulations that were originally published in Volume 39 (last year's) issues of the Administrative Register but had not yet gone into effect when the 12 bound Volumes were published.

### SYMBOL KEY:

- \* Statement of Consideration not filed by deadline
- \*\* Withdrawn before being printed in Register
- \*\*\*\* Emergency expired after 180 days
- ‡ Withdrawn deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))
- (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

103 KAR 3:040E	1862	1-15-13
Replaced	1920	5-31-13
301 KAR 2:195E	1574	12-28-12
Replaced	2018	5-3-13
900 KAR 10:010E	2296	5-13-13
Replaced	1075	12-10-13
907 KAR 1:055E	1987	3-1-13
Replaced	299	9-6-13
907 KAR 1:056E(r)	1993	3-1-13
Expired		8-28-13
907 KAR 1:711E	1587	12-21-12
Expired		6-19-13
907 KAR 3:015E	2112	4-3-13
Replaced		See 40 Ky.R.
907 KAR 3:225E	2301	5-8-13
Replaced	844	11-1-13
907 KAR 3:230E	2306	5-8-13
Replaced	848	11-1-13
907 KAR 17:005E	1589	12-21-12
Expired		7-20-13
907 KAR 17:010E	1610	12-21-12
Replaced	2343	6-27-13
907 KAR 17:015E	1620	12-21-12
Replaced	2350	6-27-13
907 KAR 17:020E	1625	12-21-12
Replaced	2353	6-27-13
907 KAR 17:025E	1630	12-21-12
Replaced	2356	6-27-13
907 KAR 17:030E	1635	12-21-12
Replaced	1846	6-27-13
921 KAR 2:015E	1639	12-21-12
Replaced	1813	6-19-13
921 KAR 3:090E	2115	3-28-13
Replaced	2218	2-19-14
922 KAR 1:130E	2117	3-28-13
Replaced	550	9-18-13
922 KAR 1:140E	2122	3-28-13
Replaced	554	9-18-13
922 KAR 1:320E	2126	3-28-13
Replaced	556	9-18-13
922 KAR 1:400E	2130	3-28-13
Replaced	559	9-18-13
922 KAR 2:090E	2134	3-27-13
Replaced	305	9-18-13
922 KAR 2:160E	2140	3-27-13
Replaced	571	9-18-13

### ORDINARY ADMINISTRATIVE REGULATIONS:

17 KAR 3:010		
Amended	1897	
As Amended	2310	7-5-13
17 KAR 3:040	1963	7-5-13
101 KAR 2:076		
Amended	2361	(See 40 Ky.R.)
101 KAR 2:095		
Amended	2362	(See 40 Ky.R.)
101 KAR 2:102		
Amended	2365	(See 40 Ky.R.)
101 KAR 3:015		
Amended	2370	(See 40 Ky.R.)
101 KAR 3:050		
Amended	2375	(See 40 Ky.R.)
201 KAR 2:020		
Amended	2377	9-6-13
201 KAR 2:030		
Amended	2378	9-6-13
201 KAR 2:074		
Amended	1753	
Amended	2175	
As Amended	2312	6-19-13
201 KAR 18:040		
Amended	2380	9-6-13
201 KAR 18:072		
Amended	2382	9-6-13
201 KAR 18:142		
Amended	2383	(See 40 Ky.R.)
201 KAR 20:057		
Amended	2191	(See 40 Ky.R.)
201 KAR 20:059		
Amended	2046	
As Amended	2314	6-19-13
201 KAR 20:070		
Amended	2194	(See 40 Ky.R.)
201 KAR 20:085		
Amended	2196	7-17-2013
201 KAR 20:110		
Amended	2197	7-17-2013
201 KAR 20:200		
Repealed	1820	5-3-13
201 KAR 20:380		
Repealed	1820	5-3-13
201 KAR 20:400		
Amended	2047	(See 40 Ky.R.)
201 KAR 20:500		
Amended	2049	
As Amended	2315	6-19-13
201 KAR 31:010		
Amended	2386	(See 40 Ky.R.)
201 KAR 31:020		
Amended	2387	10-4-13
201 KAR 31:040		
Amended	2388	(See 40 Ky.R.)
201 KAR 31:050		
Amended	2390	(See 40 Ky.R.)
201 KAR 31:060		
Amended	2391	(See 40 Ky.R.)
201 KAR 31:080		
Amended	2393	(See 40 Ky.R.)
201 KAR 31:090		
Amended	2395	(See 40 Ky.R.)
202 KAR 7:330		
Amended	2050	(See 40 Ky.R.)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	39 Ky.R. Page No.	Effective Date	Regulation Number	39 Ky.R. Page No.	Effective Date
202 KAR 7:520			902 KAR 30:160		
Amended	2056	(See 40 Ky.R.)	Amended	2422	10-16-13
202 KAR 7:540	2092	(See 40 Ky.R.)	902 KAR 30:180		(See 40 Ky.R.)
301 KAR 1:015			Amended	2425	10-16-13
Amended	2199	8-2-13	902 KAR 30:200		
301 KAR 1:122			Amended	2428	10-16-13
Amended	2201	(See 40 Ky.R.)	902 KAR 55:110		
301 KAR 2:049			Amended	629	
Amended	2061	6-6-13	Amended	1218	
301 KAR 2:122			As Amended	1413	
Amended	2064	6-6-13	As Amended	2033	3-4-13
301 KAR 2:251			906 KAR 1:160		
Amended	2397	(See 40 Ky.R.)	Amended	335	
401 KAR 10:030			As Amended	632	
Amended	584		Amended	1221	10-17-12
Withdrawn	‡	11-19-13	907 KAR 1:055		
401 KAR 5:320	2094	(See 40 Ky.R.)	Amended	2084	(See 40 Ky.R.)
501 KAR 6:070			907 KAR 1:070		
Amended	1949		Repealed	2448	9-6-13
As Amended	2316	7-5-13	907 KAR 1:071(r)	2448	9-6-13
503 KAR 1:170			907 KAR 1:072		
Amended	2066		Repealed	2448	9-6-13
As Amended	2317	7-5-13	907 KAR 1:090		
505 KAR 1:160			Repealed	2448	9-6-13
Amended	1952		907 KAR 1:092		
As Amended	2173	5-31-13	Repealed	2448	9-6-13
601 KAR 9:135			907 KAR 1:320		
Amended	1953	5-31-13	Repealed	2448	9-6-13
702 KAR 3:130			907 KAR 1:563		
Amended	1321		Amended	2434	(See 40 Ky.R.)
Amended	1891		907 KAR 1:595		
As Amended	2173	5-31-13	Amended	2438	12-2-11
702 KAR 4:160			907 KAR 3:225	2449	(See 40 Ky.R.)
Amended	2073	(See 40 Ky.R.)	907 KAR 3:230	2454	(See 40 Ky.R.)
703 KAR 5:121(r)	2098		907 KAR 3:015	2284	(See 40 Ky.R.)
Withdrawn		6-11-13	907 KAR 17:005		
703 KAR 5:250	2099		Amended	1792	
Withdrawn		6-11-13	As Amended	2322	9-19-13
787 KAR 1:010			907 KAR 17:010	1822	
Amended	2400	9-6-13	Amended	2181	
787 KAR 1:290			As Amended	2343	6-27-13
Amended	2401	9-6-13	907 KAR 17:015	1831	
804 KAR 9:040			As Amended	2350	6-27-13
Amended	1958		907 KAR 17:020	1836	
Amended	2178		As Amended	2353	6-27-13
Withdrawn		7-10-13	907 KAR 17:025	1841	
804 KAR 9:050			As Amended	2356	6-27-13
Amended	1961	(See 40 Ky.R.)	907 KAR 17:030	1846	6-27-13
815 KAR 4:027	1970		921 KAR 2:015		
As Amended	2174	5-31-13	Amended	1813	6-19-13
815 KAR 7:120			921 KAR 3:090		
Amended	1506	(See 40 Ky.R.)	Amended	2218	(See 40 Ky.R.)
815 KAR 20:020			922 KAR 1:130		
Amended	2203	8-2-13	Amended	2220	(See 40 Ky.R.)
815 KAR 20:034			922 KAR 1:140		
Amended	2208	(See 40 Ky.R.)	Amended	2225	(See 40 Ky.R.)
815 KAR 20:120			922 KAR 1:320		
Amended	2210	8-2-13	Amended	2228	(See 40 Ky.R.)
900 KAR 5:020			922 KAR 1:400		
Amended	1322		Amended	2233	(See 40 Ky.R.)
Amended	1895		922 KAR 2:020		
As Amended	2174	5-31-13	Amended	2236	(See 40 Ky.R.)
900 KAR 10:010	2443	(See 40 Ky.R.)	922 KAR 2:090		
902 KAR 30:001			Amended	2241	(See 40 Ky.R.)
Amended	2403	(See 40 Ky.R.)	922 KAR 2:100		
902 KAR 30:120			Amended	2247	(See 40 Ky.R.)
Amended	2410	(See 40 Ky.R.)	922 KAR 2:110		
902 KAR 30:130			Amended	2256	(See 40 Ky.R.)
Amended	2413	(See 40 Ky.R.)	922 KAR 2:120		
902 KAR 30:150			Amended	2261	(See 40 Ky.R.)
Amended	2419	10-16-13			

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	39 Ky.R. Page No.	Effective Date	Regulation Number	39 Ky.R. Page No.	Effective Date
922 KAR 2:160					
Amended	2269	(See 40 Ky.R.)			
922 KAR 2:180					
Amended	2278	9-18-13			

## SYMBOL KEY:

\* Statement of Consideration not filed by deadline  
 \*\* Withdrawn before being printed in Register  
 ‡ Withdrawn, deferred more than twelve months (KRS 13A.300(4) and 13A.315(1)(d))  
 (r) Repealer regulation: KRS 13A.310 - on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation

## VOLUME 40

### SYMBOL KEY:

\* Statement of Consideration not filed by deadline  
 \*\* Withdrawn before being printed in Register  
 \*\*\*\* Emergency expired after 180 days  
 (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

30 KAR 5:010E	219	6-28-13	405 KAR 10:080E	243	7-03-13
Replaced	775	11-1-13	Replaced	1066	11-7-13
30 KAR 5:020E	220	6-28-13	405 KAR 10:090E	245	7-03-13
Replaced	775	11-1-13	Replaced	1067	11-7-13
30 KAR 5:030E	223	6-28-13	405 KAR 10:201E	246	7-03-13
Replaced	777	11-1-13	Repealer		11-7-13
30 KAR 5:040E	225	6-28-13	501 KAR 6:020E	759	8-20-13
Replaced	777	11-1-13	Replaced	1398	2-3-14
30 KAR 5:050E	228	6-28-13	505 KAR 1:170E	936	10-14-13
Replaced	780	11-1-13	Replaced		4-14-14
30 KAR 5:060E	230	6-28-13	Replaced	1398	2-3-14
Replaced	781	11-1-13	804 KAR 4:390E	5	6-14-13
30 KAR 6:010E	2401	3-24-14	Replaced	170	10-4-13
31 KAR 4:070E	755	9-4-13	804 KAR 4:400E	247	6-25-13
Replaced	882	1-3-14	Replaced	811	11-1-13
101 KAR 2:210E	756	9-9-13	804 KAR 4:410E	249	6-25-13
Replaced	884	1-3-14	Replaced	811	11-1-13
103 KAR 3:010E	1529	12-27-13	804 KAR 4:430E	7	6-14-13
Replaced		5-2-14	Expired		12-11-13
103 KAR 3:020E	1534	12-27-13	815 KAR 4:030E	250	6-25-13
Replaced		5-2-14	Replaced	824	10-23-13
103 KAR 3:030E	1540	12-27-13	815 KAR 4:040E	253	6-25-13
Replaced		5-2-14	Replaced	825	10-23-13
103 KAR 3:040E	1550	12-27-13	900 KAR 5:020E	761	8-30-13
Replaced		5-2-14	Replaced	894	1-15-14
105 KAR 1:140E	233	7-01-13	900 KAR 7:030E	1564	12-17-13
Expired		12-28-13	Replaced	1929	5-2-14
109 KAR 16:010E	1561	12-18-13	900 KAR 10:020E	8	6-07-13
201 KAR 22:055E	4	5-15-13	Replaced	1080	12-10-13
Withdrawn		9-17-13	900 KAR 10:030E	762	8-22-13
201 KAR 30:315E	935	10-10-13	Replaced	1283	1-3-14
Replaced	1396	2-3-14	900 KAR 10:050E	255	7-10-13
301 KAR 2:221E	1232	10-21-13	Replaced	1083	12-10-13
Replaced	1725	3-7-14	900 KAR 10:100E	1568	
301 KAR 2:222E	1234	10-21-13	Reprinted	2091	12-17-13
Replaced	1726	3-7-14	907 KAR 1:019E	1573	12-30-13
301 KAR 2:225E	524	8-14-13	907 KAR 1:030E	1581	12-26-13
Replaced	1045	11-7-13	907 KAR 1:038E	1585	12-26-13
405 KAR 10:001E	236	7-03-13	907 KAR 1:039E	1591	12-26-13
Replaced	1058	11-7-13	907 KAR 1:044E	1595	12-30-13
405 KAR 10:070E	240	7-03-13	907 KAR 1:045E	1600	12-30-13
Replaced	1065	11-7-13	907 KAR 1:054E	1603	12-30-13
			907 KAR 1:082E	1617	12-30-13
			907 KAR 1:604E	1631	12-26-13
			907 KAR 1:631E	1638	12-26-13
			907 KAR 1:632E	1642	12-26-13
			907 KAR 1:913E(r)	1646	12-26-13
			907 KAR 3:005E	1648	12-26-13
			907 KAR 3:015E		See 39 Ky.R.
			Replaced	18	8-2-13
			907 KAR 8:005E	1655	12-26-13
			907 KAR 8:010E	1657	
			Reprinted	2095	12-26-13
			907 KAR 8:015E	1660	12-26-13
			907 KAR 8:020E	1662	12-26-13
			907 KAR 8:025E	1665	12-26-13

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907 KAR 8:035E	1671	12-26-13	11 KAR 16:001		
907 KAR 10:014E	1673	12-26-13	Amended	88	9-9-13
907 KAR 12:020E	2109	2-6-14	11 KAR 16:010		
907 KAR 13:005E	1677	12-26-13	Amended	90	9-9-13
907 KAR 13:010E	1680	12-26-13	11 KAR 16:040		
907 KAR 13:015E	1683	12-26-13	Amended	92	9-9-13
907 KAR 15:005E	1686	12-30-13	11 KAR 16:050		
907 KAR 15:010E	1688	12-30-13	Amended	94	9-9-13
Reprinted	2098		11 KAR 16:060		
907 KAR 15:015E	1691	12-30-13	Amended	95	9-9-13
907 KAR 18:001E	2404	3-24-14	12 KAR 1:116		
907 KAR 18:005E	2405	3-24-14	Amended	97	10-9-13
907 KAR 20:001E	938	9-30-13	12 KAR 1:135		
Replaced		4-14-14	Amended	98	
907 KAR 20:005E	944	9-30-13	As Amended	770	10-9-13
Replaced		4-14-14	12 KAR 1:140		
907 KAR 20:010E	952	9-30-13	Amended	100	
Replaced		4-14-14	Amended	580	
907 KAR 20:015E	956	9-30-13	As Amended	770	10-9-13
Replaced		4-14-14	12 KAR 1:145		
907 KAR 20:020E	959	9-30-13	Amended	101	
Replaced		4-14-14	As Amended	771	10-9-13
907 KAR 20:025E	964	9-30-13	12 KAR 1:150		
Replaced		4-14-14	Amended	103	
907 KAR 20:030E	969	9-30-13	As Amended	772	10-9-13
Replaced		4-14-14	12 KAR 1:155		
907 KAR 20:035E	974	9-30-13	Amended	104	
Replaced		4-14-14	As Amended	772	10-9-13
907 KAR 20:040E	979	9-30-13	12 KAR 1:165		
Replaced		4-14-14	Amended	106	
907 KAR 20:045E	983	9-30-13	As Amended	774	10-9-13
Replaced		4-14-14	13 KAR 1:020		
907 KAR 20:050E	986	9-30-13	Amended	334	
Replaced		4-14-14	Amended	854	
907 KAR 20:060E	990	9-30-13	As Amended	1004	12-6-13
Replaced		4-14-14	13 KAR 3:010		
907 KAR 20:075E	993	9-30-13	Amended	879	
Replaced		4-14-14	As Amended	1248	1-3-14
907 KAR 20:100E	997	9-30-13	13 KAR 3:050		
Replaced		4-14-14	Amended	880	
908 KAR 2:240E	2112	2-6-14	As Amended	1393	1-28-14
908 KAR 2:250E	2115	2-6-14	16 KAR 2:010		
921 KAR 2:015E	1238	11-14-13	Amended	2584	
Replaced	1735	2-19-14	16 KAR 3:080		
921 KAR 3:090E	1245	10-30-13	Amended	621	
Replaced	1740	2-19-14	As Amended	1011	12-6-13
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11 KAR 4:080			Amended	1318	
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11 KAR 5:001			16 KAR 6:010		
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11 KAR 5:140			16 KAR 9:080		
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11 KAR 5:145			As Amended	1012	12-6-13
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11 KAR 8:030			Amended	342	
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11 KAR 15:020			Amended	343	
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11 KAR 15:040			30 KAR 5:030		
Amended	82		Amended	346	
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30 KAR 5:060			Amended	1847	
Amended	353		As Amended	2281	5-2-14
As Amended	781	11-1-13	201 KAR 6:030		
30 KAR 6:010	2646		Amended	629	
31 KAR 4:070			As Amended	1017	11-20-13
Amended	882	1-3-14	201 KAR 6:040		
101 KAR 1:325			Amended	631	
Amended	1813		As Amended	1017	11-20-13
As Amended	2252	5-2-14	Amended	1849	
101 KAR 2:076		(See 39 Ky.R.)	As Amended	2282	5-2-14
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101 KAR 2:095		(See 39 Ky.R.)	Amended	632	
As Amended	259	9-6-13	As Amended	1018	11-20-13
101 KAR 2:102		(See 39 Ky.R.)	Amended	1850	5-2-14
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101 KAR 2:210			Amended	633	
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102 KAR 1:270			As Amended	2282	5-2-14
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102 KAR 1:320			As Amended	1021	11-20-13
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103 KAR 2:005			As Amended	1022	11-20-13
Amended	355		201 KAR 7:015		
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103 KAR 3:010			As Amended	2284	5-2-14
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103 KAR 3:020			201 KAR 8:532		
Amended	1821		Amended	2328	
As Amended	2257	5-2-14	As Amended	2680	
103 KAR 3:030			201 KAR 8:550		
Amended	1826		Amended	2332	
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103 KAR 3:040			Amended	2338	
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103 KAR 16:230			Amended	2343	
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103 KAR 41:120			As Amended	785	10-16-13
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103 KAR 41:200	476		As Amended	1393	1-15-14
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103 KAR 43:330			201 KAR 9:305		
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105 KAR 1:140			201 KAR 9:307		
Amended	360		Amended	2592	
Amended	1090		201 KAR 11:011		
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109 KAR 15:020			201 KAR 11:105		
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109 KAR 16:010	2014		201 KAR 11:220		
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201 KAR 12:045			201 KAR 14:115		
Amended	369		Amended	1866	
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201 KAR 12:050			201 KAR 14:150		
Amended	371		Amended	1867	
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Amended	378		Amended	399	10-16-13
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201 KAR 12:088			Amended	886	
Amended	379		As Amended	1248	1-3-14
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Amended	382		201 KAR 18:192		
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Amended	384		Amended	1323	
As Amended	1033	12-6-13	As Amended	1705	2-19-14
201 KAR 12:120			Amended	2596	
Amended	386		201 KAR 20:057		(See 39 Ky.R.)
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201 KAR 12:125			Amended	2599	
Amended	387		201 KAR 20:061		
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201 KAR 12:150			As Amended	1707	2-19-14
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201 KAR 12:190			Amended	2602	
Amended	392		201 KAR 20:240		
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Amended	393		201 KAR 20:260		
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201 KAR 12:270			As Amended	1714	2-19-14
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201 KAR 14:015			Amended	1338	
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201 KAR 14:052(r)	2016		Amended	1347	
201 KAR 14:060			As Amended	1722	2-19-14
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201 KAR 20:400		(See 39 Ky.R.)	As Amended	534	10-4-13
Amended	23		Amended	1424	
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Withdrawn		8-21-13	201 KAR 30:150		
201 KAR 20:405	2017		Amended	118	
Withdrawn		3-21-14	As Amended	534	10-4-13
201 KAR 20:411			201 KAR 30:200	182	
Amended	888		As Amended	536	10-4-13
Withdrawn		10-28-13	201 KAR 30:315	1198	
Amended	2607		As Amended	1396	2-3-14
201 KAR 20:450			201 KAR 30:321(r)	1514	4-4-14
Amended	2609		201 KAR 30:360		
201 KAR 20:470			Amended	120	
Amended	1869		Withdrawn		9-13-13
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201 KAR 21:001	1508		Amended	1426	
As Amended	2118	3-20-14	Withdrawn		2-17-14
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Amended	584		As Amended	797	10-3-13
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Amended	586		301 KAR 2:172		
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201 KAR 45:130	189		As Amended	2289	5-2-14
Amended	587		301 KAR 2:178		
As Amended	790	11-1-13	Amended	1881	
201 KAR 45:140	191		As Amended	2291	5-2-14
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201 KAR 45:150	192		Amended	1354	
Amended	590		As Amended	1725	3-4-14
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Recodified from 902 KAR 105:081		11-20-13	As Amended	1250	1-3-14
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907 KAR 1:835			Recodified from 907 KAR 1:011		9-30-13
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907 KAR 1:900			Amended	1752	
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Amended	2361		** Withdrawn, not in effect within 1 year of publication		
Amended	2801		*** Withdrawn before being printed in Register		
921 KAR 1:430			‡ Withdrawn deferred more than twelve months (KRS		
Amended	2642		13A.300(4) and 13A.315(1)(d))		
921 KAR 2:015			(r) Repealer regulation: KRS 13A.310-on the effective date of an		
Amended	1366		administrative regulation that repeals another, the regulations		
As Amended	1735	2-19-14	compiler shall delete the repealed administrative regulation and the		
921 KAR 2:035			repealing administrative regulation.		
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As Amended	2302	5-2-14			
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As Amended	554	9-18-13			
922 KAR 1:320		(See 39 Ky.R.)			
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